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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 40.

WILLIAM ROEMER, APPELLANT,

VS.

EDWARD SIMON, SAMUEL SIMON, WILLIAM SIMON, AND
MORRIS SCHWERIN.

PHILADELPHIA BAR ASSOCIATION

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE
DISTRICT OF NEW JERSEY.

FILED JANUARY 15, 1875.

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1 *Docket entries.*

WILLIAM ROEMER
vs.
EDWARD SIMON, WILLIAM SIMON, SAMUEL Simon, and Morris Schwerin.
} In equity. March term, 1872. No. 1.

	1872.	March 26.	Bill filed and writ issued ret'ble May 6, 1872.
	"	April 9.	Preliminary injunction.
	"	" 18.	Rule to show cause why inj'n should not be dissolved; ret'ble April 26.
	"	" 26.	Arguments of counsel heard, and the court, taking the papers, reserved its decision.
	"	May 7.	Fred. H. Betts, esq., appears for Edward Simon absolutely, and for Morris Schwerin absolutely, and for William Simon and Samuel Simon specially, for the purpose of objecting to the service of the writ.
	"	June 28.	Order substituting Whitney & Betts as sol'rs for defendants.
2	1872.	June 28.	Answer filed.
	"	July 25.	Replication filed.
	1872.	August 27.	Opinion including order filed.
	"	October 5.	Bond filed.
	1873.	January 18.	Statement filed.
	"	February 3.	Interrogatories on commission filed.
	"	" 14.	Notice of motion filed. Notice of intention to sue out commission filed. Order as to filing statements by def'd't filed. Order for closing testimony filed. Order for commis. to take testimony in London, England, and appointing commissioner. Commission issued.
	"	February 28.	Statement of def'd'ts filed.
	"	March 25.	" " "
	"	" 29.	Amended statement of def'd'ts for quarter ending March 24, 1873, filed.
	"	April 3.	Stipulation for hearing April 7, 1873.
	"	" 18 & 19.	Arguments heard. Decision reserved.
	1874.	" 21.	Decree for the defendants. Opinion filed.
	"	May 12.	Decree signed and filed. Def'ts' costs taxed at $487.35.
	"	July 11.	Appeal allowed. Citation and copy filed.
	"	" 22.	Affidavit of service of citation & copy filed.

3 Pleas before the honorable the judges of the circuit court of the United States for the district of New Jersey, in the third circuit, of March term, No. 1.

It is thus contained:

Be it remembered, that heretofore, to wit, on the twenty-sixth day of March, A. D. eighteen hundred and seventy-two, William Roemer, by his solicitor, William L. Dayton, esquire, filed of record in the said court his bill of complaint against Edward Simon, William Simon, Samuel Simon, and Morris Schwerin, in the words and of the tenor following, to wit:

WILLIAM ROEMER *vs.* EDWARD SIMON, WILLIAM SIMON, SAMUEL Simon, and Morris Schwerin.	In equity.

To the honorable the judges of the circuit court of the United States for the third circuit within and for the district of New Jersey :

4 William Roemer, a citizen of the State of New Jersey, and residing in the city of Newark, Essex County, in said State, brings this, his bill of complaint, against Edward Simon, William Simon, Samuel Simon, and Morris Schwerin, also residents of said State of New Jersey, and tog*a*ther carrying on and doing business under and by the firm-name of Edward Simon and Brothers, as trunk and travelling bag manufacturers, both in the said city of Newark, and in the city of New York, in the county and State of New York.

And thereupon your orator complains and says, that heretofore and prior to the 31st day of July, A. D. 1866, your orator was the first and original inventor of a new and useful improvement in traveling-bags fully described in the letters-patent hereinafter mentioned and referred to, and which said improvement had not been known or used by others prior to his said invention or discovery thereof, nor on sale, nor in public use prior to January, A. D. 1866, and which was not at the 5 time of his application for letters-patent of the United States therefor, as hereinafter mentioned, in public use or on sale by others with his consent or allowance; and that, being so as aforesaid the original and first inventor of the said improvement, and being also resident of the United States and of the said State of New Jersey, your orator made application, in due form of law, to the Commissioner of Patents of the United States for letters-patent therefor; and that your orator having fully and in all respects complied with all the requirements of the law in that behalf, and especially having made oath that he verily believes himself to be the original and first inventor or discoverer of the said improvement, and that the same had not, to the best of his knowledge and belief, been previously known or used; and having also paid into the Treasury of the United States the sum of thirty-five dollars, the required amount by law provided, and having done all other acts and things required by law to be done in the premises, the Commissioner of Patents caused letters-patent to be made out in the name of the United States of America, in due form of law, and bearing 6 date the 31st day of July, A. D. 1866, which said letters-patent are signed by W. T. Otto, Acting Secretary of the Interior, and countersigned by T. C. Theaker, Commissioner of Patents, and sealed with the seal of the Patent-Office; which said letters-patent grant and secure unto your orator, his executors, administrators, and assigns, for the term of seventeen years from the date thereof, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement, a description whereof is given in the words of your orator in the schedule attached to the said letters-patent and made part of the same, as by reference to said letters-patent, or a duly-authenticated copy thereof here in court to be produced, will more fully and at large appear.

And your orator further shows unto your honors that he verily believes, and therefore charges the fact to be, that he is the original and first inventor and discoverer of the said improvement in travelling-bags described and claimed in said letters-patent, and that the same had

7 not been known or used by others before the invention and discovery thereof by him.

And your orator further shows unto your honors that, since the granting and issuing of the said letters-patent to him as aforesaid, he has made and sold a large quantity of travelling-bags embodying the said improvement; and also that he has made and sold large quantities of the devices comprising the improvement and invention in said letters-patent described and claimed, namely, the staple, catch, or clamp marked J J′, and the band or plate marked E for holding the said staple J upon the jaws or frames of carpet-bags, as described in the drawings and description attached to the said letters-patent, to manufacturers of travelling-bags, and that he has realized large gains therefrom, and that he has ever been, and now is, willing, ready, and prepared to furnish to manufacturers of travelling-bags and to others to place on and to use and to be used on travelling-bags the said devices at fair and
8 reasonable prices, and that he continues to sell large quantities to
the trade for the purposes and uses specified, who recognize your orator's exclusive right and privilege under said letters-patent to make, use, and vend to others to be used, said devices and said improvements specified.

And your orator further shows to your honors that, heretofore, namely, on or about the   day of May, A. D. 1870, your orator brought a suit in equity in the circuit court of the United States for the district of New Jersey against Samuel Lagowitz and others impleaded for infringment on your orator's said letters-patent, and that said cause having been duly tried and argued before this honorable court, and duly submitted, a decretal order was, on or about the 29th day of November, A. D. 1871, duly entered and filed in the office of the clerk of said court, at the city of Trenton, in said State and district of New Jersey, confirming and sustaining said letters-patent and granting the relief sought by said bill of complaint, and that thereupon an order of injunction
9 was issued out of and under the seal of this honorable court
against the said Samuel Lagowitz and others, restraining him and them from further interfering and intermeddling with the said letters-patent, which said order of injunction still remains in full force and effect, and that said defendants have had full notice thereof.

And your orator further shows unto your honors that he is the sole and exclusive owner and holder of the before-recited letters-patent, and entitled to all the rights and privileges thereby granted and secured, or intended so to be, and that the said invention is of great utility and value.

But now, so it is, may it please your honors, and your orator shows and charges, that the said defendants herein, well knowing the premises, but continuing and wrongfully intending to injure your orator, and to deprive him of the gains and profits he might and otherwise would have derived from the use of the said invention so patented and granted
10 to him, as aforesaid, have manufactured and sold and are still
manufacturing and selling at the city of Newark and in the city of New York and elsewhere in the United States large quantities of travelling-bags having the same devices and improvements thereon as patented by and granted to your orator by said letters-patent, and as therein fully described, and embodying the improvement so patented, or intended to be patented, and granted to your orator in and by said letters-patent, and as your orator has reason to believe they will and intend to continue so to do, and are thereby causing your orator great and irreparable damage, and refuse to pay your orator any of the

profits which they have made by reason of such unlawful use and sale of the said invention, or to desist from manufacturing, using, and selling the same to others to use; and also in violation of your orator's said rights and privileges under and by said letters-patent, the said defendants have made and sold to others to use, for the purposes described in said letters-patent, the devices forming when attached to the
11 jaws of travelling-bags your orator's said improvement, to the great damage of your orator; all of which acts and things have been without the consent and allowance of your orator, and are in violation and infringement of the said letters-patent so granted and secured to your orator as aforesaid, and of your orator's exclusive rights under the same.

And your orator further shows unto your honors that the said defendants have connived, contrived, and conspired together and with others, and are still conniving, contriving, and conspiring together and with others, to injure your orator in his rights and privileges as secured to him and intended to be secured to him in, under, and by said letters-patent, by manufacturing, using, and selling to others to use, said improvements without your orator's license.

All of which acts and doings aforesaid of the said defendants are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises.

12 In consideration whereof, and forasmuch as your orator can only have adequate relief in this honorable court where matters and things of that sort are made cognizable by statute:

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may upon their several and respective corporal oaths, and according to their best and utmost knowledge, rememberance, information, and belief, full, true, direct, and perfect answer make to the matters and things hereinbefore stated and charged;

And that the said defendants may answer the premises, and that they may be decreed to account with and pay over to your orator the profits which they have realized and received and the damages that have accrued to your orator by reason of such unlawful use and sale of the said invention,

May it please your honors, the premises considered, to grant unto your orator the writ of injunction issuing out of and under the
13 seal of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and provided, enjoining and restraining the said defendants Edward Simon, William Simon, Samuel Simon, and Morris Schwerin, and each and every of them, their agents, servants, and attorneys, and workmen, from infringing upon the said letters-patent so granted, issued, and secured to your orator as aforesaid, by making, using, and selling to others to use, the said invention and improvement in travelling-bags, constructed and made substantially in accordance with and containing and embodying the invention described and claimed in the said letters-patent, and also from combining, conniving, and conspiring with others to infringe on the said letters-patent by manufacturing and using, and selling to others to use, the said devices for travelling-bags, forming with travelling-bags, when placed upon the jaws of travelling-bags, for the purposes described in the said letters-patent, the said improvement in
14 travelling-bags; and that your orator may have such other and further relief in the premises as the nature of the case may require, and as to your honors may seem meet.

And may it please your honors to grant unto your orator not only the writ of injunction conformable to the prayer of this bill, but also the writ of subpœna ad respondendum directed to the said defendants, and commanding them and each of them to be and appear in this honorable court on a certain day therein to be named, then and there to answer the premises, and to stand to, perform, and abide such further order, direction, or decree as may be made against them.

And your orator as in duty bound will ever pray, &c.

WILLIAM L. DAYTON,
Sol'r & of Counsel for Compl't.
JONATHAN MARSHALL,
Of Counsel for Compl't.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

15 William Roemer, being duly sworn, says that he is the complainant named in the foregoing bill of complaint subscribed by him, that he has read the said bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

WILLIAM ROEMER.

Subscribed and sworn to before me this 19 day of March, A. D. 1872.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

16 *Filed June 28, 1872.—Order of substitution.*

Circuit court of the United States, district of New Jersey.

WILLIAM ROEMER
vs.
EDWARD SIMON ET AL.

It is hereby consented that Whitney and Betts be substituted as attorneys and solicitors for the defendants herein, and that an order to that effect be entered.

Dated May 10, 1872.

FREDERIC H. BETTS.

Circuit court of the United States, district of New Jersey.

WILLIAM ROEMER
vs.
EDWARD SIMON ET AL.

On reading and filing the above consent, ordered that Whitney and Betts be, and they hereby are, substituted as attorneys and solicitors for the defendants herein.

Dated May 10, 1872.

JNO. T. NIXON, *J.*

17 Afterwards, to wit, on the twenty-eighth day of June, in the year aforesaid, comes the defendants, Edward Simon, William

Simon, Samuel Simon, and Morris Schwerin, by their solicitors, Whitney & Betts, and present their answer, which answer is filed, and is in the words of the tenor following, to wit:

WILLIAM ROEMER
vs.
EDWARD SIMON, WILLIAM SIMON, SAMUEL
Simon, and Morris Schwerin.

The answer of Edward Simon, William Simon, Samuel Simon, and Morris Schwerin, respondents to the bill of complaint, exhibited against them by the above-named complainant, William Roemer.

The respondents now, and at all times hereafter, saving and reserving
to themselves all and all manner of benefit of exception which may be
had or taken to the manifold errors, uncertainties, imperfections,
18 and insufficiencies of the said bill of complaint, for answer there-
to, or to so much as they are advised it is material or necessary
to make answer to, answering say—

That upon information and belief alone they admit that letters-patent of the United States were issued to William Roemer for an alleged improvement in travelling-bags, bearing date the 31st day of July, 1866, and numbered 56,801.

And the respondents, further answering, say that they are not informed, save by said bill of complaint, and cannot admit that said complainant has made or sold large or any quantities of travelling-bags embodying said alleged improvements, or large or any quantities of devices comprising said alleged improvement, or that he is ready or willing to furnish the same to manufacturers at fair or reasonable prices, or that the trade recognise the alleged exclusive rights of said complainant, as stated in the bill of complainant, and they leave the complainant to make such proof thereof as he may be advised.

And these respondents, further answering, say that they are not
19 informed, save by said bill of complainant, or by general rumor,
and cannot admit that said complainant brought suit against
Samuel Lagowitz and others, or that the same was tried or argued, or other proceedings had, as stated in the said bill of complaint, and these respondents say that if the said allegations of the bill are true that the same are immaterial and irrelevant as to these respondents, for the reason that they were not parties to said suit, nor did they have any notice thereof, nor did they have any interest therein, and they are not to be prejudiced thereby.

And the respondents, further answering, deny that they have ever at all in any way infringed upon the aforesaid letters-patent, or that they are now infringing upon the same, or intend so to do, either by making, using, or vending to others to be used, or otherwise, the said invention, as alleged in the bill of complaint, or otherwise.

And the respondents, further answering, say that they are ad-
20 vised, and therefore aver, that said letters-patent and each and
every part thereof are void and of no effect in law, because that
for the purpose of deceiving the public the description and specification filed by the said patentee in the Patent-Office was made to contain less than the whole truth relative to his invention or discovery, or more than is necessary to produce the desired effect.

And the respondents, further answering, say that said letters-patent, and each and every part thereof, are void and of no effect in law, because that the said patentee surreptitiously and unjustly obtained the patent for that which was in fact invented by one Wolfsky, of the firm of Wolfsky & Co., No. 5 Pilgrim street, Ludgate Hill, London, England, or by some person or persons to these respondents unknown in the employ of said Wolfsky, the said complainant being then or afterwards in the employ of said Wolfsky, who was using reasonable diligence in adapting and perfecting the same.

21 And the respondents, further answering, say that they are informed and believe that the said letters-patent, and each and every part thereof, are void and of no effect in law, because that the said alleged invention had been, prior to said alleged invention or discovery thereof, patented.

And the respondents, further answering, say that the said letters-patent, and each and every part thereof, are void and of no effect in law, because that the said alleged invention had been described in some printed publication prior to the supposed invention or discovery thereof by the complainant, to wit, in a certain printed publication or public work containing a description and diagrams of trunks, travelling bags, &c., published by one Fisher, of No. 188 Strand, London, in or prior to the year 1865.

And the respondents, further answering, say that the said letters-patent, and each and every part thereof, are void and of no effect in law,
because that the said William Roemer was not the original and
22 first inventor or discoverer of any material or substantial part of
the said alleged invention or discovery, but that the same and every material and substantial part thereof had been previously invented and used by and known to the following persons, viz: Edward Simon, now residing at Newark, New Jersey, at said Newark, and at Berlin, Prussia, and at London, England, and at New York, N. Y., & elsewhere; William Simon, now residing at Newark, New Jersey, at said Newark, and at the city of New York, & elsewhere; Barbara Simon, now residing at Newark, New Jersey, at said Newark, and at the city of New York, & elsewhere; John Hill, now residing at the city of New York, at said city & elsewhere; Edward Taylor, now residing at the city of New York, at said city & elsewhere; Max Marcuse, now residing at the city of Newark, New Jersey, at said Newark, and at the city of New York & elsewhere; Fritz Sperling, now residing at Newark, New Jersey, at Berlin, Prussia, and at London, England, and
23 at said Newark, and at the city of New York: Thomas W. Grif-
fiths & wife, now residing at Newark, New Jersey, at London, England, and at the city of New York, and at said Newark; Tiffany & Co., of and at the city of New York; Wood Gibson, of and at the city of New York; William J. Dowling, of and at the city of New York; James Dempsey, of and at the city of New York; E. C. Sheenan, of and at the city of New York; and many other persons whose names are now to the defendants unknown, but which, when discovered, they pray leave to insert and set forth in this their answer.

And the respondents, further answering, say that the said letters-patent, and each and every part thereof, are void and of no effect in law, because that the said alleged invention, with the knowledge, acquiescence, and consent of said inventor and patentee, had been in public use and on sale in this country for more than two years before the said inventor and patentee application for his patent therefor, and that the same had been abandoned to the public by the said inventor and patentee.

24 And the respondents deny all and all manner of unlawful combination by the said bill charged; without this, that there is any other

matter, cause, or thing in the said bill of complaint contained (material or necessary to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied) is true to the knowledge or belief of the respondents; all which matters and things the respondents are ready and willing to aver, maintain, and prove, as this honorable court shall direct; and humbly pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

SAMUEL SIMON.
EDWARD SIMON & BRO'S.

WHITNEY & BETTS,
Respondents' Solicitors.
FREDERIC H. BETTS,
Of Counsel.

SOUTHERN DISTRICT OF NEW YORK,
City & County of New York:

On this 22d day of June, 1872, before me came Samuel Simon, one of the above-named respondents, and, being by me duly sworn, did depose and say that he had read the foregoing answer, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

[L. S.] R. A. PIPER,
Notary Public.

25 Afterwards, to wit, on the twenty-fifth day of July, in the year last aforesaid, the replication of the said William Roemer is presented by his said solicitor, William L. Dayton, esquire, which replication being read and filed, is in the words and of the tenor following, to wit:

Circuit court of the United States, district of New Jersey.

WILLIAM ROEMER
vs.
EDWARD SIMON, WILLIAM SIMON, SAMUEL SIMON, and Morris Schwerin.

The replication of the above named complainant to the answer of the defendant above named.

This repliant, saving and reserving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the 26 said answer, for replication thereunto says that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto; and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by repliant without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by said bill he has already prayed.

W'M L. DAYTON,
Sol'r & of Counsel for Compl't.
JONATHAN MARSHALL,
Of Counsel for Complainant.

27 *Evidence.*

Circuit court of the United States for the district of New Jersey.

William Roemer
vs.
Edward Simon, William Simon, et al.

Proofs for final hearing taken on the part of the complainant in the above cause under and pursuant to the 67th rule in equity, before Joseph Gutman, j'r, examiner, by consent of counsel, for said court. Frederic H. Betts for def't. Jonathan Marshall for pl'ff. N. Y., September 21, 1872—2 p. m. Present, Jonathan Marshall, esq., counsel for complainant and representative of M'r Betts, counsel for defendants.

It is stipulated by counsel for plaintiff (M'r Betts not being able to be present at this examination) that all right to object shall be reserved to M'r Betts and that the cross-examination of the witness may
28 be taken at a future day, the witness to be produced for cross-examination at the next or a subsequent hearing.

Counsel for complainant offers in evidence letters-patent of the United States for improvement in travelling-bags granted to William Roemer, dated July 31, 1866, and numbered 56801. (It is marked compl'ts Exhibit A. Also a travelling-bag alleged to have been made and sold by the defendants in this suit, having thereon the improvements named in the letters-patent. It is marked Compl't's Exhibit B, J. G. J.

William Roemer, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. Marshall, deposes and says:

1. Q. Are you the plaintiff in this action?
A. Yes, sir.
29 2. Q. What is your name, age, residence, and occupation?
A. My name is William Roemer; I am 35 years of age; I reside at Newark, New Jersey; I am a manufacturer of travelling-bags.
2. Q. Do you know the defendants in this action?
A. Yes, sir.
3. Q. How long have you resided in Newark, New Jersey?
A. Since August, 1863.
4. Q. State whether or not you are a citizen of the United States.
A. I am.
5. Q. What has been your business ever since you have resided in Newark, New Jersey?
A. Making travelling-bags.
6. Q. How long have you been in business on your own account?
A. From August, 1863, until August, 1865, I worked for Jacob Lawrence & Co., of Newark, as journeyman, and started on my own
30 account in August, 1865, and have been in business ever since.
7. Q. Please look at Exhibit B, and state whether or not it contains the improvements specified and claimed in the letters-patent Exhibit A, as issued to you July 31, 1866.
A. Yes, sir; it does, as it has iron catches on it fastened to the top of the frame by a plate, for which I received the patent of July 31, 1866.

8. Q. Do you not consider them in every respect similar to and for the same purpose for which the improvements named in the specification in said letters-patent and claimed therein are intended ?

A. I consider them to be the very same thing and to answer the very same purpose.

9. Q. Have you with you one of your own bags of your own manufacture ?

A. No; I have not.

10. Q. About when did you make your invention or discovery ?

A. About February, 1866.

31 11. Q. Had you seen or known of any device like or similar to the device or improvement named and specified in your letters-patent previous to your discovery and invention about February, 1866 ?

A. No, sir; I never saw any the least like it.

12. Q. Do you believe yourself to be the first and original inventor thereof ?

A. I do.

Examination adjourned to a day to be fixed.

JOSEPH GUTMAN, J'R.
Examiner, &c.

32 N. Y., *November* 16, 1872—11 a. m.

Present, M'r Marshall, counsel for complainant, and M'r Betts, counsel for defendant.

Examination adjourned to November 20, 1872, at 2 p. m.

JOSEPH GUTMAN, J'R,
Examiner, &c.

N. Y., *November* 20, 1872—2 p. m.

Examination adjourned to November 22, 1872, at 2 p. m.

JOSEPH GUTMAN, J'R,
Examiner, &c.

33 N. Y., *November* 22, 1872—2 p. m.

Present, M'r Marshall, counsel for complainant, and M'r Betts, counsel for defendants.

Examination of the witness William Roemer resumed by M'r Marshall.

13. Q. State whether or not you are the exclusive owner and holder of the said invention and letters-patent.

A. I am.

14. Q. Had you made or sold any devices for holding the jaws of travelling-bags together in any manner like or similar to the ones described in your letters-patent, or devices in combination with travelling bags, two years previous, or more than two years previous, to the obtaining of said letters-patent ?

A. No, sir.

15. Q. Have you a bag with the improvement specified in said letters-patent with you ?

34 A. Yes, sir.

16. Q. Please produce it.

(Witness produces a bag, which is marked by the examiner Compl't's Exhibit C.)

17. Q. Have you offered to sell the devices forming the improvement on travelling-bags specified in your letters-patent to the said defend-

ants, and been ever ready and willing to sell the same to them on the same terms that you have sold to others the said devices?

A. Yes, sir; I have offered them frequently, and have been always willing to sell them to them at the same prices that I sold them to other parties, and have sent my travelling-agents to them offering said devices for sale.

18. Q. Have you ever brought a suit against either of the parties previous to the present suit for infringement or the said letters-patent? And, if so, state about when that suit was brought, and against which of these parties, if any, it was brought.

35 A. Yes, sir; I have. About the latter part of 1868 or the earlier part of 1869. I brought the suit against Edward Simon & Brothers, consisting at that time of Edward Simon, William Simon, and Samuel Simon.

19. Q. What became of, or what was done with, that suit?

A. Before the time was set for them to appear at Trenton, or on the day before they ought to have appeared at Trenton, William Simon came to me and requested me to withdraw the suit, as he would cease infringing on my patent at once, sign an agreement to that effect, and pay the lawyer's fee for making the agreement.

20. Q. Was the agreement entered into and executed?

A. Yes, sir; it was.

21. Q. In the making of that arrangement and agreement with the defendants in that suit did you have or consult a lawyer or counsel in regard to it?

36 A. No, sir; I did not.

22. Q. Did you sign then the agreement presented by them without counsel?

A. I did.

And, being cross-examined by M'r Betts, he deposes and says:

23. X Q. You spoke of a suit against Edward Simon & Brothers brought by you. State what patent that suit was brought upon.

A. On both of my patents.

24. X Q. Give the dates of your patents which that suit was brought upon.

A. July 31, 1866. I have not the other date in my memory. October 20, 1868, it was.

25. X Q. Look at the catches now shown you and state whether these are the catches the Mess'rs Simon were using at the time you sued them.

37 A. Yes, sir; they are.

(Defendants' counsel offers said catches in evidence; they are marked Def'ts' exhibit No. 1)

26. X Q. Did you claim that those catches infringed the patent of July 31, 1866, on which this suit is brought?

A. Yes, sir; I did.

27. X Q. Do you think so still?

A. I do think so still.

28. X Q. In your opinion, then, the catches like def'ts' exhibit No. 1 are substantially the same as the catches described in your patent of July 31, 1866, on which the suit is brought?

(Objected to on the ground that the witness is not on the stand as an expert.)

A. Not exactly the same as the patent of 1866, but they are the same as my patent of 1868.

29. X Q. Are they substantially the same as the catch described in your patent of 1866, on which this suit is brought?

38 (Same objection as before.)

A. I should think they are.

30. X Q. At the time that suit was brought and ever since it has been your opinion, has it, that catches like def'ts' exhibit No. 1 embody substantially the invention described in the patent on which this suit is brought? Is that so?

(Same objection.)

A. It is.

31. X Q. Where were you born, Mr. Roemer?

A. I was born at Meerholz, Germany.

32. X Q. In what year?

A. Nov. 27, 1837.

33. X Q. When did you first come to this country?

A. I landed in this country in 1863, on the 14th of August, if I recollect aright.

34. X Q. What had been your occupation abroad?

A. Working on harness, trunks, and travelling-bags.

39 35. X Q. Did you work on your own account or for other people?

A. I worked for other people and worked on my own account for about 4 weeks.

36. X Q. Please state where you first worked at making trunks and travelling-bags or harness.

A. After serving out my apprentice time I worked at Frankfort, Cologne, Stuttgart, Cassel, Hanau, London.

37. X Q. Who did you work for in Frankfort?

A. Heinrich Folz and Moritz Wohlfat.

38. X Q. Who did you work for in London?

A. For Vogel Bros., Bergmann & Co., and Moritz Wolfsky, and then I started on my own account, but could not succeed, and started for the United States in 1863. These are the only persons I worked for in London.

39. X Q. Have you ever been naturalized?

A. Yes, sir.

40 40. X Q. When and where?

A. At Newark, about the spring of 1866, I think, I took my first citizen's papers.

41. X Q. Do you mean that in the spring of 1866 you declared your intentions of becoming a citizen?

A. Yes, sir.

42. X Q. Before whom did you declare such intentions?

A. At the clerk's, at the court-house in Newark.

43. X Q. Do you know which court?

A. I don't know the name of the court. I asked where to go to and they showed me into the court.

44. X Q. When did you get your full naturalization-papers?

A. After being five years in the county. It was before election time of 1868, I guess.

45. X Q. Was it in 1868?

A. Yes, sir.

41 46. X Q. What do you ask for your catches, such as you say you offer for sale?

A. I sell them from $1.50 up to $5 per gross.

47. X Q. What do you ask per gross for such catches as are on compl't's exhibit C?

(Objected to as immaterial in this proceeding.)

A. About 35 cts. per dozen bags; about $2.20 per gross.

48. X Q. What do you ask per gross for such catches as are on the bag now shown you, compl't's Exhibit B?

A. I must say that I never made any with as cheap a casting on as those.

49. X Q. Did you ever make any with knobs for turning back the catch, as shown on said Exhibit B?

(Objected to as immaterial.)

A. No, sir; I never did.

50. X Q. You say these catches are very cheap castings; how much do you suppose these cost to make?

A. I could not answer, for it is hard for any mechanic to say
42 what other people's work costs.

51. X Q. What would it cost you to make them?

(Objected to as immaterial.)

A. They might cost me about $2 per gross by paying men fair wages and not taking the skin off of them, as some other parties do.

52. X Q. At what prices per gross do you sell catches suitable for putting on such bags as Exhibit B?

A. At $3 per gross.

53. X Q. What does it cost you to make those?

A. They cost me in the neighborhood of about $2.

And being re-examined by Mr. Marshall, he says:

54. R. Q. Do you make iron catches with plates?

A. I have them made for me by manufacturers.

55. R. Q. Of various styles and shapes corresponding with your patent?

A. Certainly various styles and various sizes.

43 56. R. D. You named as the prices of catches on plaintiff's
Exhibit C to be about per gross $2.20. Does that include the loop to hold the handle?

A. No, sir; it is merely the catch.

57. R. D. Have you any catches showing any different samples with you?

(Defendants' counsel admits that the defendants have sold at the store No. 61 Reade st., New York, a bag in all respects like compl't's Exhibit B prior to the filing of the bill.)

WILLIAM ROEMER.

Subscribed & sworn to before me.

JOSEPH GUTMAN, J'R,
Examiner.

Complainant rests.

44 N. Y., *January* 15*th*, 1873—12 m.

Present, M'r Marshall, counsel for complainant, and M'r Betts, counsel for defendants.

The witness, William Roemer, being recalled by M'r Marshall, deposes and says as follows:

58. R. D. Please state if the previous suit brought against Edward Simon & Brothers, in 1869, referred to in your examination, covered the patent, Exhibit A, in this suit, and, if not, what patent it was for and infringement of, and if you have any correction to make to the evidence given respecting that suit, and what explanation or correction on that particular portion of your evidence.

A. The suit I brought on both patents, and released the defendants,
Edward Simon & Brothers, only on the second patent, without, however,
consulting my lawyer about it, as M'r William Simon came to
me only the day before we ought to have appeared before the
45 court at Trenton. Then I told my counsel to drop the suit, as
the defendants promised not to infringe any more on said two
patents.

And being further cross-examined by M'r Betts, he says:

59. R. X. Have you here the agreement which was entered into between you and the defendants in that suit?

A. I left it at the time with my counsel.

(Defendants' counsel calls for the production of said agreement.)

(Complainant's counsel produces the agreement.)

(Defendants' counsel offers the agreement in evidence. It is marked "Def'ts' Exhibit 7.")

60. R. X. After the signing of this agreement was the suit you have mentioned discontinued?

A. Yes, sir; it was.

61. R. X. Did you make any other agreement except this one Exhibit 7?

46 A. No, sir; I did not.

62. R. X. Is this the agreement by which you say that you released the defendants, Edward Simon & Brothers, only on the second patent?

A. Yes, sir; I released them only on the second patent, and released them more on account of their promising faithfully not to infringe any more on both of my patents than on account of the agreement which William Simon promised, and to which in a conversation about the matter, about a year afterwards, he told me that he only fooled me and the whole thing was not worth to him to go to any lawsuit about it.

(Answer of the witness objected to by def'ts' counsel, except the first sentence, as immaterial and as incompetent, the agreement Exhibit 7 embodying the agreement between the parties, and evidence as to additional contemporaneous terms being inadmissible.)

47 63. R. X. What do you call the second patent?

A. The patent granted to me in October, 1868.

64. R. X. Do you call the first patent the one of July 31, 1866?

A. I do.

65. R. X. Now you say that by the agreement, Exhibit 7, you released the defendants, Edward Simon & Brothers, only on the second patent, do you?

A. I did at that time.

66. R. X. Now look at the agreement, defendants' exhibit 7, and state whether there is one single word in it about any patent except the patent of July 31, 1866?

A. There is nothing said in that agreement about the first patent, but
the infringement they made at that time was, I considered, an infringement
on the second patent, which was manufactured by Roberts, Stevens
& Havell and used by Edward Simon & Brothers. The agreement
was written by their attorney. I signed it, as I thought them
48 men of their word, they promising beforehand never to infringe
any more on either of the patents, (same objection as before.)
and I not having consulted my counsel in the matter.

67. R. X. Question repeated.

A. There is nothing said about any other patent except that of July

31, 1866, but the article in question here and spoken of in the agreement is an infringement of the second patent,

68. R. X. In the 66 R. cross-question you said "there is nothing said in that agreement about the 1st patent." That is untrue, is it not?

A. I thought so, as I that was in my mind, as I had not seen the agreement since 1869.

69. R. X. When you gave that answer did you not have the agreement in your hand; had you not just read it in response to the question?

49 A. I had not read it. I had it in my hand.

70. R. X. You were asked to look at the agreement and answer that question. Do you mean to say that you answered it without looking at the agreement so as to inform yourself on the subject of the question?

A. When the question was put & my counsel handed me the exhibit, counsel for the defendants asked whether the agreement was to be exhibited, to which question I handed it back to my counsel.

71. R. X. Question repeated.

A. I did answer it without looking at the agreement.

72. R. X. In answering that 66th cross-question, did you not take from that agreement the name of Roberts, Stevens & Havell as manufacturers of the catch then used by Edward Simon & Brothers?

A. I read the agreement after it was handed to me by the counsel of the defendants.

50 73. R. X. Then you did read it before answering that question in which you gave the names of the manufacturers of the catch used by Edward Simon & Brothers?

A. I know the firm of Edward Simon & Brothers and have got that all in my memory.

74. R. X. Question repeated. (Objected to, as the question has been already answered.)

A. I gave the answer to the releasing them from infringement on the second patent out of my memory, and not from reading the agreement.

75. R. X. Question repeated, and the 66th recross-question and answer read to the witness.

A. I had read it before the question No. 66 was put. I was mixed up then, thinking the counsel for the defendants meant the former question of my counsel.

76. R. X. Now in the 68. r.-cross-question I quoted from your answer to the 66th question, which has just been read to you, these
51 words: "There is nothing said in that agreement about the first patent," and I asked you whether that was untrue, and you said, "I thought so, as that was on my mind; as I had not seen the agreement since 1869." You now admit, do you, that you had just that moment read the agreement?

A. Yes, I do.

77. R. X. In answer to the 67th question you said that the article which Edward Simon & Brothers were using at the time the agreement, Exhibit 7, was made, which is referred to in the agreement, Exhibit 7, is an infringement of the second patent. Did you consider it an infringement of the first patent, the one of July 31, 1866, also?

A. I did.

78. R. X. Do you still consider it an infringement of that patent?

A. I do.

79. R. X. Are the articles marked "Defts' Exhibit No. 1" the articles referred to in Exhibit 7?

52 A. They are.

80. R. X. And in your opinion they are substantially the same as the catch described in your patent of July 31, 1866, on which the suit is brought ?

(Objected to, as having been gone into on his previous examination, and as having no reference in regard to the explanation.)

A. They are.

81. R. X. You said in your former examination that you invented the catch described in your patent, Exhibit A, about February, 1866. Explain how it was suggested to you at that time.

(Objected to, as not relative to the explanation here made and as having been gone into on his previous examination.)

A. I was making patterns for large bags, having one frame lying on the table; taking up this frame a broken buckle stuck on it, holding the jaws together, hindering me from opening the same, which gave me the idea that by fastening the same to the frame by a plate it
53 would make a good fastener to hold the ends of the jaws together.

82. R. X. Did you try it at that time ?

A. I tried it on the same day.

83. R. X. What did you do on that same day in trying it ?

(Objected to as irrelevant.)

A. I took a plate and riveted it tight to the frame, and showed the same to my workmen.

84. R. X. Did you use the piece of broken buckle for that purpose ?

(Same objection as before.)

A. I did.

85. R. X. Then the first time that you made the invention described in your patent Exhibit A, you made it by taking a broken buckle and fastening it to the frame of a bag by a plate riveted over it ?

A. I did.

54 86. R. X. On that first bag that you fixed in that way, did you put more than one of these catches ?

A. I did not make a bag; I only made a frame, and fixed one catch on just to show my men how that would work.

87. R. X. Do you consider that, the making of your invention described in your patent Exhibit A ?

A. I do.

88. R. X. How soon after that did you make any more catches and apply them to frames ?

A. At once—in a couple of days—and I went around and showed them to several of my customers, and asked them what they thought of it; finding that they would like it, I made the application for a patent.

89. R. X. How did you make these next catches within a few days after the first one ?

A. I had them made by Charles Hachmeister, out of wire. Several months afterward I took one of them and had them cast in iron.

55 90. R. X. How were the wire ones fastened to the frames of the bags, if at all ?

A. By means of a plate.

91. R. X. How do you know that it was in February, 1866, that you made the first catch and applied it to a bag ?

A. Before February I had never made any large bags, called railroad bags by the trade. Going on a business trip to Boston on the 12th of February, 1866, I was asked for large bags. Coming home on the 14th of February I started making those patterns a few days after that day.

92. R. X. Then you are sure, are you, that the first catch that you ever made or applied like that described in your patent Exhibit A was made after the 14th of February, 1866?

A. I am.

93. R X. Suppose a person should take one of the catches described in your patent and apply it to one corner of the bag-frame only,
56 would you consider that as an infringement of your patent?

(Objected to on the ground that the witness has not been offered as an expert, and does not profess to be an expert in patent causes.)

A. I would.

94. R. X. Suppose a person should take one of the catches described in your patent and apply it to the center of the frame, on top, would you consider that an infringement of your patent?

(Same objection.)

A. I would.

95. R. X. Suppose a person should apply two of the catches described in your patent to the curves of a bag-frame upon which there was no lock, would you consider that as an infringement of your patent?

(Same objection.)

A. I would.

96. R. X. Suppose a person should sell such catches entirely
57 unconnected with bags, would you consider that as an infringement of your patent?

(Objected to as before, and also as res adjudicata.)

A. I would not, providing they were used without connecting them to bag frames.

97. R. X. Do you know Samuel Phillips, of Newark, N. J.?

(Objected to as irrelevant.)

A. I think I do.

98. R. X. How long have you known him?

A. About 8 or 10 days.

99. R. X. How did you happen to know him?

(Objected to as irrelevant.)

A. He was introduced to me as coming from London, and having known me there.

100. R. X. Did he tell you that he worked with you at Mr. Wolfsky's in London nine or ten years ago?

A. He did not tell me. When he was introduced to me as
58 knowing me in London, I told him that I had not the honor of
knowing him or ever seeing him, to which he replied that he saw me once on the street. He never worked with me at Wolfsky's or any other place.

101. R. X. Didn't he tell you that he worked with you at Wolfsky's in London, and that while you and he were both working there Mr. Wolfsky made and sold, and you saw him making and selling there, the same catches that you described and claimed in your patent?

(Objected to as irrelevant.)

A. He did not.

102. R. X. Didn't he tell you anything about your having seen the catches described in your patent while you were in London?

A. He did not.

103. R. X. Do you swear positively he did not?

A. I do.

104. R. X. Who introduced Mr Phillips to you?

A. His employer, Henry White Poinier.

59 105. R. X. Was Mr Poinier a former partner of yours?

A. He was.

106. R. X. In your former examination you said that from 1863 to 1865 you worked for Jacob Lawrence & Co. Is that correct?

A. No; the name is Jacob Lagowitz & Co., of Newark.

107. R. X. How came you to leave M'r Lagowitz?

A. The way of managing his work did not suit me, having poor management in his shop. I saw by such management I could not ask for higher wages, as in that way business could not pay him. Besides, he all the time brought me poor material and expected to have good work made out of it, which disgusted me with his business. Besides, seeing other parties doing well, I thought I might be able to build up a business for myself, and so I did leave him.

60 108. R. X. After you left there were you arrested on the complaint of that firm?

A. I was not.

109. R. X. Were you never arrested for stealing from that firm?

(Objected to as irrelevant.)

A. I was arrested, they not finding any proof against me; that is, Jac. Lagowitz sent his book-keeper to me three times, that he wanted to see me; after calling on me the third time I went to see Jacob Lagowitz; on coming into his office, he asked me, "What are you going to do?" I told him, "Bring you to State's prison, sir, for swearing false, as you told me when you asked me to come with you to the station-house, some of the workmen told you I was making work at home out of your material, and on those grounds you swore that goods had been stolen from you." He replied, "You are a good workman, and I want to keep you; I'll increase your wages; and, for God's sake, think of my wife and children, and don't bring me into such trouble;" and he wept like a child.
61 Then I dropped the suit I had started against him, and kept with him for about 14 months longer, as I did not want to change much around, and had not means enough at that time to carry that suit through.

And being further examined by M'r Marshall, he says:

110. R. D. Who was you attorney in that suit?

A. M'r Louis Greiner.

111. R. D. Was there any further trouble after this between you and M'r Lagowitz?

A. None.

112. R. D. Did you leave him peaceably and in good friendship to each other?

(Objected to as leading.)

A. I did.

113. R. D. Did he or not express to you that he was wrong in the charge made against you?

(Same objection.)

62 A. He did, and discharged the man who caused all the trouble by telling him this story, on which ground he had me arrested.

114. R. D. You say, in your cross-examination, that you had not seen the agreement between yourself and Edward Simon & Brothers since 1869. Did you mean by that that you had not seen it since then until produced before the examiner?

(Objected to as leading.)

A. I did mean that I had not seen it until produced before the examiner.

115. R. D. In whose possession had it been until it was produced here before the examiner, to the best of your knowledge?

A. In the possession of my counsel, M'r Jonathan Marshall.

116. R. D. When did you deliver it to him?

A. On the same day that it was signed.

63 117. R. D. Had you informed him that such an agreement was made, or to be made, until you gave it to him, or had you consulted him with regard to it?

A. I had not.

118. R. D. You say, in answer to question 87 of the cross-examination, that the placing of the buckle upon the jaws of the travelling-bag you consider the making of your invention. What do you mean by the making of your invention?

A. I mean by taking a clamp, or a wire that is bended down on each side, and fastening it to a bag-frame with a plate so as to move it up and down, and preventing the frame from opening.

119. R. D. Did you consider that the perfection of the invention or did you make improvements?

A. I afterwards made improvements just as the different kinds of frames would require.

WILLIAM ROEMER.

Subscribed and sworn to before me this 15th day of Jan'y, 1873.

JOSEPH GUTMAN, J'R,
Examiner, &c.

64 *Def'ts' Exhibit No. 7—J. G., J'r, Exn.*

Articles of agreement made and entered into this first day of October, in the year of our Lord eighteen hundred and sixty-nine, between William Roemer, of the first part, and Edward Simon, William Simon, and Samuel Simon, composing the firm of Edward Simon & Brothers, of the second part, witnesseth:

Whereas the said Roemer has commenced a suit in the circuit court of the United States, district of New Jersey, in equity, against the said Edward Simon, William Simon, and Samuel Simon, for an alleged infringement by said Simons of certain letters-patent of the United States, dated July 31, 1866, for a frame for travelling-bags having staples and straps adjusted on the top thereof, relieving the lock from strain;

And whereas it has been agreed by said parties to settle the said suit, the said Simms agreeing to cease to use the clasp or catch manufactured by Stephens, Roberts & Havell, of Newark, New Jersey, and the said Roemer agreeing to withdraw said suit and pay all costs thereof:

65 Now this agreement witnesseth that the said party of the second part hereby promise, covenant, and agree to and with the said Roemer, his executors, administrators, and assigns, that they will not manufacture or use the said clasp or catch manufactured by the said Stephens, Roberts & Har*i*ll without the consent of the said Roemer, his executors, administrators, or assigns.

And the said Roemer hereby promises, covenants, and agrees to and with the said party of the second part, their executors, administrators, and assigns, that he will for*e*with and without delay withdraw the said suit against said Simons, and pay all costs thereof fully and entirely harmless and indemnifi*ed* the said Simons from and against all loss in the premises.

In witness whereof the parties hereto have hereunto set their hands and seals the day and year just above written.

WILLIAM ROEMER. [L. S.]
EDW. SIMON & BROS. [L. S.]

Signed, sealed, and delivered in the presence of—
F. W. LEONARD.

66 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph Gutman, j'r, the examiner before whom the proofs herein were taken, do hereby certify that, pursuant to the stipulation entered into before me in that behalf, I have had made the foregoing copy of Exhibit No. 7, to be substituted in evidence in lieu of the original, and having carefully compared the same with the said original in my possession, I certify that such copy is in all respects full, true, accurate, and correct.

N. Y., *Jan'y* 15, 1872.

JOSEPH GUTMAN, J'R,
Examiner, &c.

67 N. Y., *February* 27, 1873—2 p. m.

Present, M'r Marshall, counsel for complainant, and M'r Packer, on part of defendants.

Examination adjourned, at request of the defendants, to February 28, 1873, at 2 p. m., defendants stipulating that complainant have one day additional to the time allowed by the court for rebutting testimony.

JOSEPH GUTMAN, J'R,
Examiner, &c.

N. Y., *February* 28, 1873—2 p. m.

Present, M'r Marshall, counsel for complainant, and M'r Betts, counsel for defendants.

THOMAS BRIGGS, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Marshall, deposes and says as follows: 68

1. Q. What is your name, age, residence, and occupation?

A. My name is Thomas Briggs. I am 32 years old. I reside at Newark, N. J. I am a satchel-maker.

2. Q. How long have you been in the United States?

A. I came here two years ago next April.

3. Q. Where did you reside previous to your coming to the United States?

A. In London, England.

4. Q. Where was your native place?

A. London, England.

5. Q. What business were you in in London?

A. Satchel-making.

6. Q. Were you ever in the employ of Moritz Wolfski, in London? If so, state when and at what street and number. 69

A. Yes, sir: I was in the employ of Moritz Wolfski, in London, at No. 5 Pilgrim street, Ludgate Hill, in 1869.

7. Q. Please state when you entered his employ and when you left it.

A. I could not give the exact month; as near as I can recollect it was about August, 1869; and when I left it was about July, 1870.

8. Q. Were you there previous to 1869, at Moritz Wolfski's, in his employ?

A. No, sir.

9. Q. What was Moritz Wolfski's business?

A. He carried on the business of sâtchel and travelling-bag manufacturer.

10. Q. In what capacity were you employed by him?

A. I was employed to rivet the bags in the frames.

11. Q. Did Moritz Wolfski use on bags made by him catches
70 or fastenings for holding the jaws of travelling-bags together
upon each side of the lock, to your knowlege, like this one now
shown to you? (Showing to witness def'ts' Exhibit 8.)

A. No, sir.

12. Q. Did he use any, to your knowledge, like these, and applied in the same manner to the frames of travelling-bags as those on defendants' Exhibit No. 9? (Showing witness def'ts' Exhibit 9.)

A. There are two kinds here. He used something similar to the brass one on this frame, but differently constructed; the clamps were made the same as those now in use in this country under the title of Roemer's patent, and different in that respect to the one now shown me.

13. Q. You say he used some similar to the brass one on Exhibit 9. Do you mean that he did not use any like the iron one?

A. Yes, sir.
71 14. Q. Where were bag-frames with these catches, that he used
made? Please state if you know.

A. I understood at the time they were first used there that they were manufactured by M'r Steinmetz, of Paris.

15. Q. Were there any marks upon them to show that they were manufactured by M'r Steinmetz, of Paris?

A. The only mark upon them was the peculiar construction of the lock that was made by M'r Steinmetz, attached to the frame. The catches were marked patented; the date 1866, as near as I can recollect.

16. Q. Would you be likely to know of the different kind of catches that M'r Wolfski used on his bag-frames while you were with him?

A. Yes, sir.

17. Q. Please state the reasons why you would be.

A. I was employed in the department set apart for framing all
72 satchels made in that manufactory.

18. Q. Did you know in London one Samuel Phillips, a worker on travelling-bags or engaged in such business?

A. Yes, sir.

19. Q. Please state when and where you first knew him.

A. I first knew him at Mr. Frankenburg's, bag-manufacturer, of Skinner street, London; as near as I can recollect, it was in 1865; it might have been 1866. It was the same year that the convict Müller was hung in London.

20. Q. Who was this Müller that you refer to and for what was he hung? Explain.

A. He was hung for the murder of a M'r Briggs in a railway carriage on the North London Railway.

21. Q. And when you saw Phillips at Frankenburg's it was the same year, was it?

A. Yes, sir.

73 22. Q. Were you at work at Frankenburg's?

A. Yes, sir.

23. Q. Was Phillips at work there also?

A. Yes; he came to work there while I was there employed.

24. Q. Do you know where he came from to Frankenburg's?

A. I understood he had recently come from Birmingham, England.

25. Q. Did he leave Frankenburg's before you did? And please state about how long you were there together?

A. I left before he did. I was there only a short time after he came.

26. Q. Have you ever seen this same Samuel Phillips, that you speak of, since you came to the United States?

A. Yes, sir. I saw him in January of this year in Newark, New Jersey.

27. Q. Where does he now reside and what is he doing, and where?

A. He now resides in Newark, and is employed at Mr. Poinier's,

74 a bag-manufacturer of Beaver s't., Newark.

28. Q. Has he mentioned to you anything as to testifying or that he was a witness in this suit of Roemer against Edward Simon & Brothers?

A. He told me on one occasion that he had been to New York and had given evidence in relation to Roemer's patent.

29. Q. Did he say for whom; whether for Roemer or the Simon'es?

A. He said he had been subpœnaed by M'r Simon.

30. Q. And this is the same Samuel Phillips that you knew and whom you have mentioned as having seen in the employ of Frankenburg in London?

A. Yes, sir.

And being cross-examined by M'r Betts, counsel for defendants, he deposes and says as follows:

75 31. X. Q. Can you swear positively to the year when you first saw Mr. Phillips at Frankenburg's?

A. It was either 1865 or 1866. As I have before stated, it was the year that Müller was hung for the murder of M'r Briggs.

32. X Q. Did you know while you worked in London the firm of Fisher, of No. 188 Strand?

A. Yes, sir.

33. X Q. Look at the bag now shown you, and state if that is one of Fisher's manufacture.

A. Never having worked there, I cannot say.

34 X Q. Is that an English-made bag?

A. I don't know.

35 X Q. Did you ever see any such bags when in England?

A. I have seen something similar but not exactly the same.

[Bag marked for identification J. G., j'r.]

THOMAS BRIGGS.

76 Subscribed & sworn to before me this 28th day of February, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Examination adjourned to March 3d, 1873, at 1 p. m.

JOSEPH GUTMAN, J'R,
Examiner.

77 N. Y., *March* 3, 1873—1 p. m.

Present, M'r Marshall, counsel for complainant, and M'r Betts, counsel for defendants.

Examination further adjourned to March 4, 1873, at 12 m.

JOSEPH GUTMAN, J'R.,
Examiner, &c.

N. Y., *March* 4, 1873—12 m.

Present, counsel as before.

ALBERT CROUSE, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by M'r Marshall, counsel for complainant, deposes and says as follows:

78 1. Q. What is your name, age, residence, and occupation?

A. My name is Albert Crouse; I am 44 years old; I reside at Brooklyn, N. Y.; I am a diamond-dealer.

2. Q. What was your business in 1863?

A. Clerk for Schuyler, Hartley & Graham, fancy goods.

3. Q. At what place?

A. No. 19 Maiden Lane, N. Y.

4. Q. Had you charge of any particular branch of their business?

A. The fancy-goods department.

5. Q. For how long?

A. From 1863 to 1869.

6. Q. Did you have any dealings there in travelling-bags?

A. I did.

7. Q. Did you know of all the different kinds of travelling-bags they dealt in at the time you were there?

A. I did.

79 8. Q. Did they have travelling-bags with catches on them, like the ones now shown to you on pl'ff's Exhibit C, and applied to travelling-bags in the same manner as these are?

A. They did not.

9. Q. Or like the ones on def'ts' Exhibit 9, and applied in the same manner?

A. They did not.

10. Q. If they had have had them, would you have known of them?

A. I would.

11. Q. Previous to the year 1866, did you know of the existence of any such catches, and applied to travelling-bags in the same manner as those?

A. I did not.

And being cross-examined by M'r Betts, counsel for defendants, he says:

12. X Q. What was the date of your first going to Schuyler, Hartley & Graham's?

A. March 1, 1863.

80 13. X Q. Do you know what kinds of bags or catches for bags they had in the years 1861 and 1862?

A. I do not.

14. X Q. While you were there did they have a bag-department?

A. Not specially for that branch.

15. X Q. Who had principal charge of the exportation of foreign bags in that firm during all the period that you were with them?

A. Mr. Schuyler and myself.

16. X Q. Who had principal charge of the sale of foreign-made bags?

A. Nobody in particular.

17. X Q. Can you name any persons who were with Schuyler, Hartley & Graham between 1863 and 1866, and who sold bags for them?

A. I could not name any one particularly, because we all sold them.

18. X Q. Name any body who was accustomed to sell bags for

81 them during that period besides yourself.

(Objected to as leading into matters not pertinent to the rebuttal.)

A. One individual is dead and one is half dead—they were my principal fellow-clerks—A. G. Kirkland, Thompson Lewis; another man was Bowers; I don't know his first name.

19. X Q. Which one is dead?

A. Kirkland.

20. X Q. Where are the other two to be found?

A. I could not tell.

21. X Q. Can't you tell about either of them?

A. No, sir.

22. X Q. Where did you last hear of Thompson Lewis?

A. In Brooklyn.

23. X Q. Whereabout?

A. At his house, Franklin avenue.

24. X Q. Do you know the number?

A. 425.

82 25. X Q. Where did you last hear of Bowers?

A. At Francis Freeman's, up Broadway, where Tiffany & Co. formerly were; I think No. 550.

26. X Q. Did Schuyler, Hartley & Graham import many foreign bags in 1863, 1864, and 1865?

A. A great many; the majority I purchased myself in Europe.

27. X Q. When did you go to Europe to purchase them for them first?

A. In 1865.

28. X Q. What time in 1865?

A. January.

29. X Q. Did they import large numbers in 1863 and 1864?

A. Not considerable.

30. X Q. Can you give us any idea of the numbers?

A. No, sir.

31. X Q. As many as a thousand each year?

A. It is impossible to tell.

83 32. X Q. As many as 500?

A. I could not tell.

33. X Q. As many as 300?

A. I should think so.

34. X Q. In 1863 and 1864 where did they get their foreign bags from?

A. France and some from England.

35. X Q. When you went abroad to purchase for them where did you purchase bags? (Objected to as not pertinent to the rebutting testimony, and as opening new matters which the defendants should have ascertained from their own direct testimony.)

A. In France and in Germany.

36. X Q. How long were you abroad in 1865?

A. From nine to ten months.

37. X Q. Did you go in 1866?

A. I did.

38. X Q. How long were you gone then?

A. About nine to ten months.

84 39. X Q. Give the names of the manufacturers from whom Schuyler, Hartley & Graham bought bags in France, England, and Germany.

(Objected to as before.)

A. I could not give those without reference to Schuyler, Hartley & Graham's books.

40. X Q. Did they buy of Steinmetz, in Paris?

A. I do not know.

41. X Q. Did they buy of Fisher, in London?

A. I think not.

42. X Q. What makes you think not?

A. I never heard the name.

43. X Q. Can you give any name that you did hear?

A. Not from memory.

44. X Q. Did you ever at any time see any bags at Schuyler, Hartley & Graham's with catches on them like those on pl'ff's Exhibit C or def'ts' Exhibit 9.

A. I have seen them shown to them for sale.

45. X Q. When first?

A. About 1867 or 1868.

85 46. X Q. Who showed them to them?

A. A manufacturer by the name of Simon.

47. X Q. How do you know it was in 1867 or 1868?

A. Because in 1866, being abroad, if I had seen them previous to that, I might have looked for the same thing in Europe.

48. X Q. How do you know it was not in 1869?

A. It might have been in 1869 as well.

49. X Q. Describe what kind of catches there were on the English bags that were imported prior to 1866?

A. If I recollect well, I have not seen any.

50. X Q. Will you swear that there were no catches on any bags imported from England prior to 1866?

86 A. I could not.

Witness desires to leave on account of business engagements. Counsel for defendants is prepared to proceed with his cross-examination, but at request of complainant's counsel consents to suspend until such further time as the witness shall be again produced, provided he be again produced, insisting on his right to take the cross-examination.

Examination adjourned to March 5, 1873, at 12 m.

JOSEPH GUTMAN, J'R,
Examiner, &c.

87 N. Y., *March* 5, 1873—12 m.

Examination further adjourned to 4 p. m. of same day.

JOSEPH GUTMAN, J'R,
Examiner.

N. Y., *March* 5, 1873—4 p. m.

Present, counsel for plaintiff.

Examination adjourned to March 6, 1873, at 4 p. m.

JOSEPH GUTMAN, J'R,
Examiner, &c.

N. Y., *March* 6, 1873—4 p. m.

Present, M'r Marshall, counsel for complainants, and M'r Betts, counsel for defendant.

Cross-examination of witness Crouse by M'r Betts:

51. X Q. Were you absent from the city of New York any of the time during the year 1863?

88 A. If I have, for a short time to some other cities, I don't recollect.

52. X Q. What other cities?

A. Philadelphia and Boston.

53. X Q. Were you absent any of the time from the city of New York during the year 1864?

A. I believe not.

54. X Q. Did you have any charge of the importation of foreign bags before the time when you went abroad in 1865?

A. I did.

55. X Q. What did you do in regard to the importation of foreign bags before that time?

A. Giving orders for such.

56. X Q. Did you give all the orders?

A. I believe I did.

57. X Q. What did M'r Schuyler have to do with the importation of foreign bags?

A. He had nothing particular for the importation of bags alone.

89 58. X Q. Did he not have principal charge of the importation of foreign bags, in connection with you, during all the period that you were with Schuyler, Hartley & Graham?

A. He had the principal superintendency.

59. X Q. Who had principal charge of the sale of foreign-made bags?

A. Nobody in particular.

60. X Q. Can you state when first you ever saw any bag with catches upon it like plaintiff's Exhibit C, or defendants' Exhibit No. 9?

A. Not any earlier than 1867.

61. X Q. Question repeated.

A. I could not state, positively, the year, but am sure it wasn't before 1867.

62. X Q. Did you ever see any foreign-made bags with finely-finished brass catches of any kind upon them?

A. I have.

90 63. X Q. What kind have you seen?

(Objected to as being indefinite and unlimited.)

A. It would be difficult for me to describe; probably you could describe it better. You must have seen it yourself on bags used even at the present time, being a button attached to one-half of the frame and turned half round in the other half of the frame.

64. X Q. Is that the only kind of side-catch that you remember to have seen in foreign-made bags?

A. It is the only one, except the fastening of sides by strap and buckle.

65. X Q. How long ago did you see the side-catch, consisting of a knob passing through one-half of the frame?

A. Since 1864.

66. X Q. How do you know that it was in 1864 that you first saw it?

A. Being shortly before my trip to Europe in 1865.

91 67. X Q. Can you swear that there never were any bags with any other side-catch upon them imported by Schuyler, Hartley & Graham while you were with them?

A. I would not swear to it.

68. X Q. How long ago do you remember to have seen bags with the sides fastened together by straps and buckles?

A. I should think fifteen years at least, or twenty.

69. X Q. Have you seen imported bags with these fastenings as long ago as that?

(Objected to as irrelevant.)

A. The matter was too important to me to pay any attention to foreign bags at that time.

70. X Q. Where do you live?

A. Brooklyn.

71. X Q. Give your exact address.

A. No. 93 Penn street.

And, being re-examined by M'r Marshall, the witness says:

92 72. R. D. Q. Do you mean, when you say you never saw any other side-catch on foreign-made bags but the button you describe in answer 63, that you had not seen any previous to 1866, or do you mean, generally, that you have not seen any ever at any time on foreign-made bags but such button as you describe?

(Objected to as leading; also, because the answer of the witness is plain and does not need explanation.)

A. I have not, to my recollection, seen any other on foreign-made bags at any time.

73. R. D. Q. How long since you have been in the business connected with travelling-bags?

A. Since 1869 I have not been connected with that business.

74. R. D. Q. Please state what kind of fastening for holding the jaws of travelling-bags together, of foreign-made bags, or for relieving the locks on the same, were used on the tops or sides of the jaws, and kept for sale by Schuyler, Hartley & Graham while you were there, previous to 1867?

93 A. None others than what I stated.

And, being recross-examined by M'r Betts, the witness says:

75. R. X Q. Did you ever see on any bags any catches like defendants' Exhibit No. 16?

A. I have not.

76. R. X Q. Can you name all the different kinds of bags that you saw at Schuyler, Hartley & Graham's prior to the year 1865?

A. I could not name them by any names.

77. R. X Q. Could you describe each and all of them, giving the particulars of their construction, kind of locks, frames, handles, and materials?

(Objected to as immaterial as to the locks, frames, and materials.)

A. I could not describe them to illustrate them.

78. R. X Q. Do you remember all the different kinds, what materials they were of, what kind of locks, handles, and frames they had? 94

(Same objection.)

A. I could indicate, by samples being shown to me, whether they were such as were kept.

79. R. X Q. Are you sure that you would remember all the kinds, and be able to identify all the locks, frames, and handles of each?

A. I would, positively.

ALBERT CROUZLY.

Sworn to before me.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Examination adjourned to March 7th, 1873, at 10 a. m.

95 N. Y., *March* 7, 1873—10 a. m.

Present: counsel, as before.

EDWARD V. FARGIS, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matters of controversy herein, and being examined by M'r Marshall, counsel for complainant, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Edward V. Fargis; I am 45 years old; I reside in New York City; I am salesman with Tiffany & Co., jewelry, fancy goods, &c.

2. Q. How long have you been with Tiffany & Co.?

A. I went there in 1853.

3. Q. Were you with them during the years 1861, 1862, 1863, while they were at 550 Broadway?

96 A. I was not there in 1861. I was there in 1863, and from that up to this time.

4. Q. What particular department are you in?

A. Fancy goods.

5. Q. Do they deal in travelling-bags, and did they during the time that you were there?

A. Yes, sir.

6. Q. Did Tiffany & Co., previous to 1866, have on sale or otherwise, at their place on Broadway, travelling-bags having catches upon them like and applied to the bags in the same manner as these you see on plaintiff's Exhibit C, or def'ts' Exhibit 9, or def'ts' Exhibit 15?

A. Not to my knowledge.

7. Q. Would you have been likely to have known if they had them?

A. I should.

97 8. Q. Please state the reasons why you would have been likely to have known.

A. From my being in that department.

9. Q. Did you have the general supervision and management of that department?

A. Yes, sir.

10. Q. And knew all of the kinds that they had?

A. I did.

11. Q. Look at the drawings on the letters-patent Exhibit A. Did you ever see there, at Tiffany's, previous to 1866, any bags having catches upon them like or similar to, and applied in the same manner as, those shown in the drawings attached to these letters-patent?

A. I think not.

12. Q. Did you ever see, anywhere, prior to 1866, or know of travelling-bags having catches like and applied in the same manner to bags as these in the exhibits above referred to?

98 A. No, sir.

And being cross-examined by M'r Betts:

13. X Q. Are you positively sure that you did not see any such catches as these referred to on bags at Tiffany's prior to 1866?

A. Yes, sir.

14. X Q. You said, in answer to the 11th question, w
if you had seen such catches, "I think not;" are you su

A. Well, I can say that I never saw a catch like that u
on that bag over there, (indicating Mr. Marshall's bag, which is
for identification by the examiner, "J. G., j'r.")

15. X Q. Do you mean that you never saw any such side-catches before to-day on any bag?

A. I saw that bag, I think, a week ago, or a few days ago.

99 16. X Q. And a week ago or a few days ago was the first time that you ever saw any bag with side-catches on it like those described in the Roemer patent?

A. Yes, sir.

17. X Q. You were not aware, then, were you, that such catches have been for several years past put upon a very large proportion of all the bags which were manufactured and sold in this country?

(Objected to as embodying a quantity or a proportion of a quantity which is not a matter of proof at *the* this time, and which has not been proved.)

A. I was not.

18. X Q. Prior to the time when you first saw M'r Marshall's bag, a few days since, did you ever see any catches on any bags in any way similar to those described in Roemer's patent?

A. I have seen spring-catches.

19. X Q. What do you mean by spring-catches?

100 A. Spring-catches that lap over the frame of the bag.

20. X Q. How did they work as compared with those on M'r Marshall's bag?

A. Entirely different—there was a plate on top of the frame, and the tongue came over right on this plate, and you had to push a spring to throw the tongue back.

21. X Q. Is that the only kind of side-catch you ever saw on any bags until about a week ago?

(Objected to as requiring the witness to go outside of the rules, and testify as to the different kinds of catches he had seen since 1866, and as irrelevant.)

A. No.

22. X Q. What other kinds have you seen?

A. I saw one with a very large plate, with a fastening on one side—it came over the frame; it was probably an inch long, and was solid.

101 23. X Q. Is that the only other kind you ever saw?

A. Yes, sir; those two kinds.

24. X Q. When did you first see the plate-fastening which was probably an inch long, and solid?

A. I will say within five years.

25. X Q. Are you sure that you have not seen it longer ago than five years?

A. Yes; quite sure.

26. X Q. How long ago have you seen the spring-catch first described by you?

A. I should think within that time.

27. X Q. Not before then?

A. I don't recollect.

28. X Q. Are you at Tiffany's now?

A. Yes, sir.

29. X Q. Will you swear positively that Tiffany & Co. have not got

A. I would, positivepresent moment bags with catches on them sub-
ımilar to those in the Roemer patent?
Sworn to befied to as irrelevant, and requiring the witness to swear
technicality, the question being technical.)
do.

30. X Q. Where did Tiffany & Co. get their foreign bags from prior to 1866?

(Objected to as irrelevant.)

A. I don't know anything about the names of the manufacturers at that time at all.

31. X Q. Did they get any from Paris prior to 1866?

A. Yes, sir.

32. X Q. Did they get any of Steinmetz' manufacture prior to 1866?

A. I don't know.

33. X Q. Do you know the French bag-frame called No. 41?

A. No, sir.

34. X Q. Do you know any of the names for any French bag-frames?

(Objected to as irrelevant.)

103 A. I do not.

35. X Q. Were you at Tiffany's during all the year 1865?

A. Yes, sir.

36. X Q. Did they have during that year any fine French travelling-bags which opened half-way down, with pockets on the outside?

(Objected to as irrelevant.)

A. Yes, sir.

37. X Q. Will you describe the kind of catches, or fastenings of any kind, which were on these bags?

(Objected to as before.)

A. A centre lock.

38. X Q. Is that all?

A. All I recollect of.

39. X Q. Will you swear positively that that was all the fastening upon them?

(Same objection.)

A. I can't answer that question.

104 40. X Q. Can you state how the handles of those bags were fastened to the frames—whether by rings fastened by a plate or by rings & rivited with a pin, or otherwise?

(Same objection.)

A. To the best of my recollection, the rings were screwed on the frame.

41. X Q. Are you sure?

A. To the best of my recollection, I am.

42. X Q. Will you swear that that was the way they were fastened?

(Same objection.)

A. I don't understand the purport of the question. I am under oath now. I don't know what else I can do.

43. X Q. Did Tiffany & Co. have any of such bags in 1864, such as mentioned in the 36th cross-question?

(Same objection.)

A. Yes, sir; I think they did.

44. X Q. Did they have any English-made bags prior to 1866?

105 A. Yes, sir.

45. X Q. When first—what year?

(Objected to as irrelevant.)

A. I don't recollect.

46. X Q. How do you know that it was prior to 1866?

A. From the fact of seeing them.

47. X Q. How do you know that it was before 1866 and not after that you first saw them at Tiffany's?

A. From my recollection.

48. X Q. Have you anything to fix your recollection?

(Same objection.)

A. I cannot give any explanation why or how I saw them.

49. X Q. Do you know of whose manufacture the English bags were?

A. No, sir.

50. X Q. Can you name all the different kinds of English bags that you had at Tiffany's since 1863?

A. Fitted bags and bags not fitted.

106 51. X Q. I mean all the different styles of frame and of handles, locks, or other fastenings?

(Objected to as before.)

A. No; I cannot.

52. X Q. Could you name those particulars as to all the French bags you have had during that period?

A. Only such as I have mentioned already.

53. X Q. Who has been connected with the fancy-goods department at Tiffany's before 1866 except yourself?

A. Quite a number of persons have been employed and left the house, and all that.

54. X Q. Name anybody who is now in the house besides yourself.

A. Benjamin W. Andrews.

55. X Q. Any one else?

A. I think not.

107 56. X Q. Did you ever have at Tiffany's, in the year 1865, any presentation-belts?

(Objected to as irrelevant.)

A. I don't know anything about that.

57. X Q. Do you mean you don't recollect?

A. I don't recollect; I don't know exactly what you refer to.

58. X Q. Did you keep military goods at Tiffany's in 1865?

(Objected to as irrelevant.)

A. I think we did.

And, being further examined by M'r Marshall, he says

59. Re-D. By the fancy-goods department mentioned in question 53 and your answer to the same, do you have reference to the department in bags?

A. Yes, sir; that is included; that department includes everything that is not jewelry and silver.

60. Re-D. And when you say that Benjamin M. Andrews is there, you mean as salesman?

108 Yes; certainly.

ED. V. FARGIS.

Subscribed & sworn to before me this 7th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner, &c.

Adjourned to same day at 2 p. m.

JOSEPH GUTMAN, J'R,
Examiner, &c.

109 N. Y., *March* 8, 1873—10 a. m.

Present, counsel as before.

Benjamin M. Andrews, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr. Marshall, deposes and says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Benjamin M. Andrews; I am 28 years old; I reside at New York; I am salesman with Tiffany & Co., of New York.

2. Q. Were you in the employ of Tiffany & Co. in 1861, 1862, and 1863?

A. I was.

3. Q. How long have you been in their employ?

A. From that time to the present.

110 4. Q. In what department of their business?

A. Fancy goods.

5. Q. Does the fancy-goods department include the leather goods and bags?

A. It does. They are all under one head.

6. Q. Were you familiar with the bags that they have had in their store at 550 and 552 Broadway?

A. I was. I could not very well help being familiar; I handled them all the time. Everything in that department went through my hands in one way or another before it was put in stock. I had charge of keeping the stock in order—everything in that department.

7. Q. Please look at plaintiff's Exhibit C and def'ts' Exhibits 9 and 15, and state if Tiffany & Co. had bags having fasteners and catches upon them at each side of the lock, on the jaws of the frame, for relieving the locks and holding the jaws together, like or similar to the
111 catches on those exhibits, or any of them, and applied in the same manner.

A. No; we never had. We have had catches for fastening bags, but nothing of this style. Ours has been an English catch, with a spring-fastening to press and fly back; and we have had a broad metal fastening, not fastened on the top, but fastened on one side of the jaw of the bag. It was more like an old-fashioned portemonnaie-fastener, riveted on one side, and then falling over the two jaws of the bag. I should think it was fully an inch square—a broad piece of metal about an inch square. Those are the only two catches we have ever had. One I know was English, and the other, I think, was French.

8. Q. Was that catch that you speak of as a broad metal catch in the shape of heavy sheet-metal, or some other kind?

A. What do you call sheet metal? It was about the thickness
112 of that, (pointing to the frame of the jaw of Exhibit 9.)

And, being cross-examined by M'r Betts, he says:

9. X Q. Did you ever see any catches for bags that operated on the same principle as those described in Exhibit No. 9 before you saw these to-day?

A. Yes.

10. X Q. When and where?

A. The first one that I saw I saw at retail store in Albany—that was about two years ago.

11. X Q. Please describe the spring-catch that you speak of.

A. There is a sort of latch on the top; at the side of the latch is a little knob that you press, that runs through and that you press from both sides; then this piece comes over and snaps into that latch, which holds it; it was an English affair.

113 12. X Q. Whose make are the English bags that you import?

A. That I cannot tell you; they are bought by Tiffany, Reed & Co., our house in Paris and in London; they come through them.

13. X Q. You don't know the make of the French bags either?

A. No; they come through the same source.

14. X Q. In the year 1865 did you have in the stock any finely-made French bags with frames opening half-way down, and with pockets on the outside?

(Objected to as immaterial.)

A. Yes.

15. X Q. Do you remember what kind of catches they had?

(Same objection.)

A. Do you mean fastening besides the lock. I don't think they had any; merely the lock—a long lock with two bolts shooting into it 114 about two inches apart, which made it strong enough without an additional catch. We have had very few bags with catches on at all—only the furnished bags, and it is only of late years that we have used a catch except in furnished bags.

16. X Q. Are you sure those bags did not have any catches upon them, or any fastening other than the lock?

A. To the best of my recollection—I am almost positive.

B. M. ANDREWS.

Subscribed and sworn to before me this 7th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Adjourned to March 10, 1873, at 4 p. m.

115 N. Y., *March* 10, 1873—4 p. m.

Examination adjourned to March 11, 1873, at 4.30 p. m.

JOSEPH GUTMAN, J'R,
Examiner, &c.

N. Y., *March* 11, 1873—4.30 p. m.

Examination adjourned to March 12, 1873, at 10.30 a. m.

JOSEPH GUTMAN, J'R,
Examiner.

N. Y., *March* 12, 1873—10.30 a. m.

Present, M'r Marshall, counsel for complainant.

Examination adjourned to 3 p. m. of same day.

JOSEPH GUTMAN, J'R,
Examiner, &c.

N. Y., *March* 12, 1873—3 p. m.

Present, counsel for the respective parties, as before.

WILLIAM ROEMER, called as a witness on his own behalf, having 116 been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Marshall, counsel for complainant, deposes and says as follows:

1. Q. Please state when and how long you worked for Moritz Wolfski in London.

A. In 1862, from about March until about the latter part of July or the early part of August.

2. Q. Did you know while there such a person as Samuel Phillips, who testified in this suit as a witness on behalf of defendants?

(Objected to as already inquired of.)

A. I did not know him there, and never saw him there, to the best of my knowledge.

3. Q. When was the first time you ever saw him?

A. About the fore part of January of this year.

117 4. Q. Did Isaac Poinier ever tell you that he had seen during the summer of 1868, at the store of Dempsey & Dowdings, a printed catalogue containing cuts of travelling-bags, showing catches like yours and applied in the same manner, previous to the commencement of this action?

A. He never did.

5. Q. When did you first hear of the existence of such a catalogue as alleged by the defendants?

A. In the latter part of December, 1871, or the early part of January, 1872.

6. Q. Did you ever see any catalogue having any cut or description in it of any catches similar to or like your patent, and applied in the same manner as the one in your patent?

(Objected to as before, and as immaterial.)

A. I did not.

7 Q. Was there any travelling-bag brought to your place for
118 repairs at any time before your application or during the pendency
of your application for a patent on the lock, which is shown on def'ts' Exhibit 15, having such a lock on it or a lock working on the same principle?

A. No, sir.

8. Q. When did you make your application for a patent on that lock for which a patent was granted to you in December, 1869?

A. Some time about August or September, 1869.

9. Q. How long previous to your application for a patent did you make your invention, and how do you fix that time?

A. About one year previous I made my invention, and several weeks after I had a lock made of the same principle as the one patented by a tinsmith frame-maker of Newark. Some time after I had another one made by James H. White. A few months after that I made my application.

119 10. Q. Were these locks made after the same manner that the one shown on Exhibit 15 is made, and with the view of obtaining a patent on the same?

A. They were.

11. Q. Were they the same as that?

A. They were the same, with the exception of the inside part, lock part.

12. Q. In coming from Trenton, after the matter of the injunction on this suit at any time, did you tell William Simon or any other person that you had worked on catches or applied them, or seen them abroad, either in London or elsewhere, previous to your invention?

A. I never did.

13. Q. Look at def'ts' Exhibit 15 and state whether or not that bag, the catches on the same, and the locks are of your manufacture.

A. They are.

Being cross-examined by M'r Betts, he says:

120 14. X Q. Where was Morris Wolfski's place of business when you worked for him?

A. At No. 12 Newgate street, on the right-hand side going towards the general post-office, and opposite a college. I don't know the name of the college.

15. X Q. Did Moritz Wolfski at that time have a partner?

A. Not that I know of. I never heard that he had any partner.

16. X Q. Do you know whether he had a partner afterwards?

A. I heard so while I was in this country, that he took a partner about 1867, or had a partner about that time.

17. X Q. Do you know what his partner's name was whom you heard he had in 1867?

A. I did not.

18. X Q. What sort of a building was it in which Wolfski's
121 place of business was carried on at the time you worked there?

A. A dwelling-house with a store on the ground-floor.

19. X Q. How many stores?

A. Three, if I recollect right.

20. X Q. What business was carried on in the store on the ground-floor?

A. Butchery.

21. X Q. What room did you work in at Morris Wolfski's?

A. When I went there, the first few weeks I worked in the top front room, the windows leading out to Newgate street. Afterwards I worked in one of the back rooms, a small room hardly big enough for two men to work in.

22. X Q. How many back rooms were there?

A. Two on the top floor and two on the middle floor.

23. X Q. How many workmen did Wolfski employ at that time?

122 A. About six men, and three or four girls, and one errand-boy.

24. X Q. What was your department of the business?

A. Preparing bags and stitching some in frames.

25. X Q. What do you mean by preparing bags?

A. Take the leather after it is cut out, stiffen the bottom, make pleats into the pockets, line the lips and bind them, make the fasteners, finish the bags so far to be ready to be stitched together.

26. X Q. Did anybody assist you in that department? If so, who?

A. Nobody assisted me on that work, if you mean that. There were others making the same kind of work.

27. X Q. Who besides yourself?

A. There was a M'r Englehardt, M'r Lauenburg, a M'r Berberich, and there was a Swedish man by the name of Petersen.

123 28. X Q. Did you see all the different kinds of bags that were made at that establishment prepared?

(Objected to as immaterial.)

A. I could not say that I saw them all. I saw the biggest part of them.

29. X Q. Was it a small business or a large one that Wolfski carried on that time?

A. It was a small business, as we were only from 6 to 10 hands, and we had not steady work even in the best season. We made mostly common work.

30. X Q. Do you know where Wolfski got any of his frames from?

(Objected to as irrelevant.)

A. While I was working there he got the better frame of Steinmetz, of Paris. He had some which were of Solingen make—they were steel frames—and he had a few of English make—iron frames which were covered with the bag at the same time.

124 31. X Q. Did you know any employee of Wolfski's by the name of Simpkins?

A. I did not.

32. X Q. Did Isaac Poinier ever show you the catalogue mentioned in your direct examination, and which you said you heard of about December, 1871, or January, 1872?

A. He did not.

33. X Q. Did H. W. Poinier?

A. He did not.

34. X Q. Did anybody?

A. Nobody except Mr. Dowding, in January, 1872, after I had heard of that catalogue, and requested him to show me the same.

35. X Q. Who told you about the catalogue?

A. Henry White Poinier.

36. X Q. He was a former partner of yours, was he not?

A. He was. At that time we were ready to dissolve—that is, at the time he told me of the catalogue.

125 37. X Q. When did you dissolve?

A. About the 1st of February, 1872.

38. X Q. Did you ever see any foreign-made bag with a lock on it like that on def'ts' Exhibit 15?

A. I never did.

39. X Q. What year was it when you had the first lock made like that on def'ts' Exhibit 15?

A. About the latter part of 1868.

40. X Q. What month?

A. It might have been November or December, and it might also have been January, 1869. I must have the lock yet in my possession in the factory around.

41. X Q. That lock was made by M'r Smith, of Newark?

A. Yes, sir. He has his place of business at Union Building, Centre street, now.

42. X Q. How much did you pay for that lock?

(Objected to as immaterial.)

126 A. I don't think I paid anything for it; I guess I owe him for it yet.

43. X Q. Why not?

(Same objection.)

A. He never asked me anything for it; he never sent me any bill for it, and I forgot to ask him.

44. X Q. Have you ever had any other single locks made by him?

(Objected to as immaterial.)

A. No, sir.

45. X Q. How long after you made your invention of that lock was it that Smith made this lock?

A. Several weeks—about 2 or 3 months.

46. X Q. Was it 2 or 3 months?

A. About 2 or 3 months. I don't think it was less than 2 months, and I don't think it was less than 3.

47. X Q. Did William Simon come back from Trenton with you on the cars after the application for an injunction in this suit?

A. He did.

48. X Q. Did he show you any side-catch at that time?

A. Not that I remember. I would not want to swear positive either way, though I don't believe he did.

49. X Q. Did you have any conversation about side-catches?

A. We had.

50. X Q. Don't you remember his showing you a heavy chased French side-catch made out of brass?

A. No, sir, I don't believe he showed me any.

51. X Q. Are there any persons to whom you send side-catches abroad?

A. There are not, except when I made the first ones I sold three bags in April, 1866, to P. C. Spurhau, which went to Europe, as he
ordered them expressly for gentlemen going out at that time—this
128 was either the end of May or beginning of June, 1866; it might
have been the beginning of May, 1866; and then I sent some to Paris, to M'r Steinmetz. With him I made an agreement that he should make frames with these catches and send them over to this country and pay me a royalty on those he sent to this country.

(Objected to unless the agreement is produced.)

52. X Q. Will you produce said agreement, and attend and be cross-examined in relation to the same?

A. Yes; it must be in the court in Trenton now, as it was used in the trial of Roemer against Lagowitz.

(M'r Betts asks an adjournment of the examination of this witness until such agreement is produced.)

And being further examined by M'r Marshall:

53. Re-D. You were accustomed to employ M'r Smith, who made the locks for you referred to, in other matters, for which you paid him, or were you not?

(Objected to as leading.)

A. I used to buy frames of him, for which I always received bills
129 and paid those bills. For the lock I never received any bill, so I
forgot all about paying it.

Further cross-examination of this witness adjourned to March 14, 1873, at 1 p. m.

Examination adjourned to March 15, 1873, at 1 p. m.

JOSEPH GUTMAN, J'R,
Examiner.

130 N. Y., *March* 13, 1873—1 p. m.

Present, M'r Marshall, counsel for complainant, and Mr. Betts, counsel for defendants.

Examination further adjourned to March 13th, (same day,) at 3 p. m.

MARCH 13, 1873—3 p. m.

Present, counsel as before, and the witness William Roemer, for further cross-examination.

And the said witness being further cross-examined by M'r Betts, counsel for defendants, says:

54. X Q. Have you produced to-day the agreement of which you spoke on your last examination?

A. Yes, sir; there it is.

(Defendants' counsel offers the agreement in evidence, marked "Def'ts' Exhibit 22." Copy to be made and used as original.)

131 55. X Q. Do you yourself manufacture any side-catches under your patent?

A. I do not. I have them made outside.

56. X Q. Who makes them?

A. D. M. Meeker makes my castings. Riley & Lynch make the stamped-up ones out of wire, and make the plates for both of them.

57. X Q. Do R. Newman & Co. make any for you?

A. Not now, but during 1868, 1869, 1870, and 1871 they had them made in France by M'r Steinmetz, and were put on the frames over there, which I had them import for me.

58. X Q. During the time that R. Newman & Co. had side-catches made abroad for you, did you get side-catches made by any one else except them?

A. Yes, sir; I had by the parties before mentioned.

59. X Q. Did you buy any of R. Newman & Co. off of the frames?

132 A. I never did.

60. X Q. Do you know whether said side-catches, during the time R. Newman & Co. had them made abroad, could be made cheaper or not abroad than here?

A. I guess we could make them here just as cheap; but as the frames were made over there, R. Newman & Co. preferred to have the catches made there, and have the frames come over complete.

61. X Q. How long had you been buying frames of R. Newman & Co. before the contract Exhibit 22 was made?

A. The contract was made several months before the agreement was signed. I can't tell exactly how long. I have been buying of them since September, 1865.

62. X Q. Did you ever grant any licenses to any other person under your said patent except to R. Newman & Co.?

133 (Objected to as immaterial.)

A. I did not.

63. X Q. Who fixed the price of 35 cents for every dozen frames?

A. I did.

64. X Q. Did you ever ask them any more than that?

A. I don't think I did.

WILLIAM ROEMER.

Subscribed & sworn to before me this 13th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner, &c.

134 N. Y., *March* 14, 1873—11 a. m.

Present, counsel for the respective parties as before.

The witness Roemer, being produced for further examination, deposes and says as follows:

65. Re-D. Please look at the def'ts' Exhibit 22 and see if that is an agreement between yourself and M. Steinmetz, of Paris, and explain how the agreement was with reference to the frames which M. Steinmetz sent to this country having your catches on them.

(Objected to on the ground that the witness has been fully interrogated in regard to his alleged agreement with Steinmetz, and the examination of the witness has been wholly closed. Also objected to so far as the question calls for the statement of the contests of any agreement not here produced.)

A. This is not an agreement made with M. Steinmetz, but an
135 agreement made with M. Newman & Co. When I stated that I
had an agreement with Steinmetz I had in my mind that Mess'rs.
R. Newman & Co. requested me (objection made by M'r Betts to any

statement of R. Newman & Co.) to make an agreement with them so that they could have their frames made with such catches on through Mr. M. Steinmetz and import them to this country and sell them to the trade, so I had Steinmetz in my mind, thinking that I had an agreement with Steinmetz while I had an agreement with R. Newman & Co., and R. Newman & Co., as I understood from them, an agreement with M. Steinmetz, as they were M. Steinmetz' agent for this country.

(Same objections to the answer.)

66. Re-D. Where is R. Newman & Co.'s place of business?

A. I think No. 72 Duane s't, New York. The number I am not quite sure of.

67. Re-D. Did you receive bag-frames from them of Steinmetz'
136 make, having your catches upon them?

(Same objection.)

A. I did.

68. Re-D. Were they ordered made in consequence of the agreement referred to?

(Same objection.)

A. They were.

(Defendants' counsel declines to cross-examine the witness on this subject for the reasons above stated, and also because the alleged agreement with Steinmetz is not produced.)

And being further cross-examined, he says:

69. Re-X. Have you used threatening language to any of the witnesses examined by the defendants in this case or proposed to be examined by them, to wit, to John Hill, Mr. Taylor, or any other person?

(Objected to as irre*vel*ant and not pertinent to the rebuttal on this case, no such matter having been shown by the defendants.)

A. I have not, with the exception towards Samuel Phillips,
137 against whom I may have stated that I would like to have him arrested for swearing that he worked with me in London at Morris Wolfski's, of which I am positive he never did. This I might have said to other parties—never anything to Samuel Phillips himself.

(Complainant's counsel states that he has sent to the clerk of the court for a certified copy of the agreement between Newman and Steinmetz, which he will offer in evidence, which he believes to be filed in court, or that a certified copy of the same is filed.)

WILLIAM ROEMER.

Subscribed sworn to before me this 14th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Rebutting proof for complainant closed.

JOSEPH GUTMAN, J'R,
Examiner.

138 N. Y., *March* 20, 1873—12 m.

Present, counsel for the respective parties.

Charles Moses Schultz, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by M'r Marshall, counsel for complainant, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Charles M. Schultz. I am 39 years old. I live at Newark, N. J. I am a bag-maker.

2. Q. Did you ever work for Isidor Levi, in Newark?

A. Yes, sir.

139 3. Q. Please state when you worked for him; when you went there, and when you left.

A. I went there in April, 1864: I left in August, 1865.

4. Q. What was your business when you worked for him?

A. I was foreman of the shop.

5. Q. What was his business?

A. He manufactured traveling-bags and general sportsmen's goods, gun-cases, and things like that.

6. Q. Please look at def't's Exhibit 23 and the drawings thereon, and state whether or not you saw or knew of any travelling-bag catches in his shop or possession during the time that you were there like those drawings which you see on that paper.

(Def't's counsel objects to all evidence except in rebuttal of the evidence tending to impeach the veracity of the plaintiff, or of the witness examined in reference to Exhibit 25.)

140 A. This figure 2 I think I saw something like in his shop.

7. Q. When?

A. During the time that I have been there.

8. Q. Can you describe precisely what you did see there?

A. Yes, sir.

9. Q. Please describe it?

A. He had a ring like this on Exhibit 15, extended (pointing to the ring on the handle) like Fig. 2 on this paper.

10. Q. Did you ever see any there like No. 1?

A. No, sir.

11. Q. Would you have been likely to have seen them if he had have had them?

A. Well, I should think so, because all the bags after they were finished went through my hands for my examination.

141 12. Q. Did you ever see any like it previous to M'r Roemer's patent?

A. No, sir.

(All testimony tending to show the novelty of M'r Roemer's patent objected to.)

13. Q. Were those No. 2 you speak of there as an experiment, or for what *pur*purpose were they there?

A. They were for an experiment. We made a few of them and dropped it; the customers did not like the arrangement.

14. Q. Where did you go to when you went from M'r Levi's?

A. I went into partnership with August S[illegible]

15. Q. Are you positive that while at M'r [illegible]vi's at work you saw there such catches as are represented in No. 2?

A. Well, I think so; yes, sir.

16. Q. What year was it that you saw them?

A. I could not state the time exactly; it was during the time I

142 was there.

17. Q. Was it the first part of your being there or the last part?

A. I think it was the last part.

18. Q. Do you know who made them?

A. I do not.

19. Q. Did he make them?

A. No, sir.

20. Q. How long have you known M'r Roemer, the plaintiff in this action?

A. Since 1864—1863.

21. Q. Please state what his character is as a man of truth and veracity.

A. I take M'r Roemer for a true and honest man.

22. Q. Did you ever hear or know anything of M'r Roemer that would cause you to disbelieve him under oath or otherwise?

A. No, sir.

143 23. Q. Would you believe him when under oath?

A. I would.

And being cross-examined by M'r Betts he says:

24. X Q. How long have you known M'r Roemer?

A. Since 1863.

25. X Q. In what transaction did you first know him?

A. In the bag business.

26. X Q. What connection did he have with you?

A. We worked together in one shop.

27. X Q. Was any business ever transacted between you and him?

A. No, sir.

28. X Q. State the names of the parties with whom you know that he had business transactions.

A. I can't think of them.

29. X Q. Do you know any of them?

A. No, sir.

144 30. X Q. Do you know of any parties with whom he ever contracted in relation to patent matters?

A. No, sir.

31. X Q. If you had a transaction with M'r Roemer in regard to a patent in which you were interested, and which he was trying to sell you, would you take all his statements as strictly true without further evidence?

(Objected to as indefinite and irrelevant.)

A. I think I would.

32. X Q. What do you mean by you think you would?

A. I mean that I would believe what he said.

33. Re-D. Did you use to see M'r Levi frequently after you left working for him in 1865?

A. Yes, sir.

145 34. Re-D. Do you know M'r Drescher, of Levi & Drescher, with whom he went into partnership?

A. Yes, sir.

35. Re-D. You were occasionally in M'r Levi's shop after you left there in 1867?

A. Occasionally I was.

36. Re-D. Now, are you sure that it was while you worked there, or after you left there, that you saw in his shop catches like No. 2?

A. I saw something similar to it.

37. Re-D. When?

A. In the latter part of the time that I worked there.

38. Re-X. How do you know that it was in 1864 that you went there, and not in 1865?

A. Because in 1865 I went into business with Stiel, right after I left there. I worked for him fifteen months, so it must have been in 1864.

146 39. Re-X. What makes you sure it was not in 1866 that you went into business?

A. In the first place, it was 1865 when Lincoln was killed, and in 1865 I went with August Stiel.

CHARLES M. SCHULTZ.

Subscribed and sworn to before me this 20th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner, &c.

GOTTFRIED AMBS, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by M'r Marshall, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Gottfried Ambs. I am 24 years old. I live at Newark, N. J. I am a bag-maker.

147 2. Q. Did you ever work for Isidor Levi?

A. Yes, sir.

3. Q. When did you work for Isidor Levi?

A. In 1866.

4. Q. For how long?

A. Until 1868.

5. Q. When you worked for him what was your employment?

A. I worked at bags.

6. Q. Did you know of his experimenting on bag-catcher, while you were there?

A. Yes, sir.

7. Q. Was he experimenting on either of the catches shown on Exhibit 23 while you were there? and if so, state which.

(First part of the question objected to as leading.)

A. No. 2.

8. Q. What year was this?

148 A. 1867.

9. Q. Did he make them himself?

A. No, sir.

10. Q. Where did he get them?

A. He got them of a man at Newark, who made them; I cannot tell his name.

11. Q. Did you know the man at the time?

A. I saw the man.

12. Q. Do you know where he worked?

A. No, sir; I did not know where he worked.

13. Q. Did he use many of these catches like No. 2?

A. No, sir.

14. Q. Do you know why?

A. No, sir.

15. Q. Do you know a man by the name of Lewis Hilbrecht?

A. I suppose that is the man that made the catches.

16. Q. Do you know him?

149 A. Yes, sir.

17. Q. Where did you ever him?

A. At Levi & Descher's.

18. Q. What makes you think that he is the man that made those catches?

A. Because he brought them into the shop at the time I was there.

19. Q. At the time you was where?
A. At Levi & De'chers.
20. Q. What did he bring them there for?
A. He brought them there and wanted to get them made by M'r Levi.
21. Q. Do you know why these catches were made?
A. No, sir.
22. Q. Did you know whether there were ever any made before that time or not, like No. 2?
A. This is the first pair I ever saw.
23. Q. What year was that?
A. 1867.

150 And being cross-examined by Mr. Betts, he deposes and says:
24. X Q. How many of these catches did you see?
A. Two of them.
25. X Q. What kind of work did you do for M'r Levi; what part of bag-making?
A. I was framing bags.
26. X Q. Did you know of all the new inventions that were brought into the office?
A. I saw the No. 2 catch. No, sir.
27. X Q. How old were you at the time?
A. I was going on my 18th year.
28. X Q. What year was it?
A. 1867.
29. X Q. What part of the year?
A. May.
30. X Q. Will you swear that M'r Hilbrecht brought the catches that you saw in May, 1867?
151 A. Yes, sir.
31. X Q. How do you know?
A. Because it was right after when Levi went into partnership with Drescher.
32. X Q. How do you connect so slight a circumstance with the time of the formation of the partnership?
A. Because it was just at the time I went to my father.
33. X Q. Please explain more fully how you connect this visit with the time mentioned?
A. Because I had been boarding with my uncle until Levi went into partnership with Drescher.
34. X Q. How long after the partnership did M'r Hilbrecht appear?
A. I guess it was a month.
152 35. X Q. What circumstance do you remember that makes you sure, of your own knowledge, that M'r Drescher was in partnership with M'r Levi at that time?
A. Because Levi moved out into Drescher's shop.
36. X Q. How long did you work for M'r Levi before the partnership?
A. About ten month'.
37. X Q. When did you first go to M'r Levi?
A. In 1866.
38. X Q. Are you sure that M'r Hilbrecht did not bring the catches to M'r Levi during these 10 months?
A. Yes, sir.
39. X Q. Will you swear that Hilbrecht brought the catches to M'r Drescher's shop, and not to M'r Levi's?
A. Yes, sir.

40. X Q. Was M'r Drescher present?

(Objected to as irrelevant.)

A. No, sir.

41. X Q. What were you doing at the time?

A. I was getting some trimmings for the bags.

153 42. X Q. How did you happen to notice the catches?

A. I saw them have them on their hands.

43. X Q. Who do you mean by them?

A. M'r Levi and the man that made them.

44. X Q. Had you ever seen him before, M'r Hilbrecht?

A. No, sir.

45. X Q. Have you ever seen him since?

A. Yes, sir.

46. X Q. Where?

A. I saw him at Drescher's shop.

47. X Q. When; how often?

A. In 1867; once or twice afterwards.

48. X Q. Do you know of his ever coming to M'r Levi before 1867?

A. No, sir.

49. X Q. How long before 1867 had you been there?

154 A. About 6 months.

50. X Q. Did you examine the catch at the time?

A. No, sir.

51. X Q. Did you ever see catches like it before?

A. No, sir.

52. X Q. How do you know it was catch No. 2 and not No. 1 on Exhibit 23?

A. Because No. 2 has got a ring on.

53. X Q. Was anything attached to the ring at the time?

A. No, sir.

54. X Q. Had you ever seen catches like No. 1 on Exhibit 23?

A. Yes, sir.

55. X Q. Where?

A. I saw them in William Roemer's shop.

56. X Q. What called your attention to the ring?

A. I saw the handle put on.

155 57. X Q. Who put it on?

A. I don't know.

58. X Q. Are you sure it was the ring to which the catch was attached?

A. Yes, sir.

59. X Q. How long before had you seen the catches at M'r Roemer's?

A. I had not seen any catches before I saw the catch No. 2.

60. X Q. Were these the first catches on bags or frames of bags or made to be put on bags that you ever saw?

A. Yes, sir.

61. X Q. Look at Exhibit No. 23 and state whether you ever saw before that time any catches similar to No. 1.

A. Yes, sir.

62. X Q. What does figure 1 represent?

A. A plate.

63. X Q. What else?

A. No ring.

156 64. X Q. What is the article represented in Figure 1 used for?

A. Catch No. 1 is used for bags—for frames.

65. X Q. You say that you had never seen any catches before you saw the catch represented as No. 2. Explain how you happened to see an article like No. 1, and what you thought it was.

A. As I asked for work with M'r Roemer, he showed me a frame with the catch No. 1.

66. X Q. When did this occur ?

A. In 1868.

67. X Q. Was this the first time you had seen a catch without a ring attached ?

A. Yes, sir.

68. X Q. With whom were you working at the time ?

A. For William Roemer.

69. X Q. At what ?

A. At satchels.

157 70. X Q. Where are you working now ?

A. At William Roemer's.

71. X Q. When did you first know M'r Roemer ?

A. At the time I asked for work.

72. X Q. How long have you worked at travelling-bags ?

A. Seven years.

73. X Q. With whom did you work before you were with M'r Levi ? (Objected to as having been exhausted.)

A. I did not work in a shop.

74. X Q. What did you have to do with travelling-bags before that time ?

A. Nothing.

75. X Q. You are sure that it was 7 years that you have been at work at them ?

A. Yes, sir.

76. X Q. Where did M'r Levi work ? Where was his shop at the time you were with him ?

A. Market st.

77. X Q. What part of Market st. ?

A. Bet. Broad & Church st.

158 78. X Q. Was he there all time you worked with him ?

A. Yes, sir.

79. X Q. Was a M'r Schultz w*al*king there at the time ?

A. No, sir.

Redirect:

80. Re-D. Q. Did M'r Levy have his shop at one place all the time you worked for him, or did he move his shops during the time you were at work for him ?

A. He moved his shop.

81. Re-D. Q. What do you mean when you say he was there all the time you worked for him, in answer to question 72 X Q. ?

A. I mean that he was never off travelling.

82. Re-D. Q. In answer to Q. 77 you said between Broad & Church st. Do you mean that M'r Levy had his shop there between Market and Church st. all the time that you worked for him ?

A. No, sir.

83. Re-D. Q. What do you mean by that he moved his shop while you worked for him ?

159 A. That he moved his shop, corner of Mulberry & Market st., when he went into partnership with Drescher

83. Re-D. Please state where and about how long you worked for Levi in each place.

A. I worked about 10 months for Levi, and for Levi & Drescher I worked a year.

84. Re-D. Now please state at what different places Levi had his shop while you worked for him.

A. He had his shop at the corner of Broad and Church street, and then we moved to the corner of Mulberry & Market street.

85. Re-D. Do you mean when you say you worked there all the time that you worked for Levi wherever Levi might be carrying on business when you worked for him?

A. All the time I worked for Drescher—for Levi & Drescher.

160 86. Re-D. Then a part of the time that you worked for Levi, Drescher was a partner?

A. Yes, sir; part of the time—afterwards—first I worked by Levi, and afterwards we moved to Drescher and went into partnership with Drescher.

87. Re-D. And where was Drescher's place?

A. Corner of Mulberry & Market streets.

88. Re-D. Then when Levi formed a partnership with Drescher, did you go to work for Levi & Drescher?

A. Yes, sir.

89. Re-D. Now at the time you first saw the catch like drawing No. 2, in Exhibit 23, do I understand you that you never saw any bag-catches like the one represented by drawing No. 1, previous to that?

(Objected to as having been already shown.)

A. No, sir.

90. Re-D. Please explain what you saw, and when you saw them.

161 A. This catch with a ring—that is the first catch I ever saw; in 1867 that was.

91. Re-D. Do you mean by that that you never saw any bag-catches like either one of them before that time?

A. No, sir.

92. Re-D. Please state what you do mean.

I mean that I never saw a catch like No. 2 before I saw No. 2. No. 2 is the first catch I ever saw.

93. Re-D. You say "I never saw a catch like No. 2 before I saw No. 2. No. 2 is the first catch I ever saw." Do you mean that you never saw, before you saw No. 2, any catch like that represented in drawing No. 1?

(Objected to as leading.)

A. Yes, sir.

And being further cross-ex.:

94. Re-X. How long have you known M'r Levi?

A. Since 1865.

162 95. Re-X. What was he at work at at that time?

A. Bag business.

96. Re-X. How did you meet him?

A. I went in his shop trying to get work.

97. Re-X. Did he give you work?

A. No, sir; not at that time.

98. Re-X. How long afterwards?

(Objected to as exhausted on that subject.)

A. The first time I asked for work was in September, and he gave me work in 1866—July.

99. Re-X. Did you know M'r Roemer at that time?

A. No, sir.

100. Re-X. How long have you known M'r Roemer?

A. Four and a half years.

101. Re-X. Was he interested in these bag-catches at that time?

(Objected to as already gone into.)

163 A. Yes, sir.

102. Re-X. Did you see any of them with him?

A. Yes, sir.

103. Re-X. When was the time that you first saw them with M'r Roemer?

(Objected to as indefinite and irrelevant, and pertaining to what has already been gone into and answered.)

A. In 1868.

104. Re-X. Was that the first time that you had seen M'r Roemer?

A. Yes, sir.

104. Re-X. When you went to him were you engaged in putting catches on bags?

A. Yes, sir.

105. Re-X. When you were working on Market street, between Broad & Church, did you put the catches on the bags, or did M'r Levi?

A. No, sir; there were no catches in the shop.

164 106. Re-X. Did you ever put catches on bags before you worked for M'r Roemer?

A. No, sir.

107. Re-X. Was the catch that you first saw with M'r Levi separate or attached to a bag?

(Objected to as having been previously answered.)

A. Separate.

108. Re-X. Did any one attach it to a bag?

A. I don't know.

109. Re-X. You never saw it attached to a bag?

A. I did see it.

110. Re-X. When did you see any catches like No. 2 on Exhibit 23 attached to bags?

A. In 1867.

111. Re-X. How many did you see?

A. Two on a bag.

112. Re-X. Were these all you ever saw?

A. Yes, sir.

165 113. Re-X. How were they attached to the bag?

(Objected to as having been gone into.)

A. They were put on the frame. I could not tell you how the plate was—with a handle on it.

114. Re-X. Were these the same catches that you saw before, or different ones of the same kind?

A. I could not tell you whether they were different ones or not, because they were just like them. I did not see them put on.

115. Re-X. Who attached them to the bag, you or M'r Levi?

(Objected to as having been previously asked.)

A. I don't know who put them on the bag.

116. Re-X. Was it the same day, or afterwards; if so, how long after you saw them on the bag?

A. Three weeks afterwards.

117. Re-X. You say that you did not examine the catch; how
166 do you know that the catch you saw detached was like the catch
you saw on the bag?

(Objected to as irrelevant.)

A. I saw the catch on the bag, but I don't know what kind of a bag it was on. I saw the same catch as No. 2.

118. Re-X. You say that you did not examine the catch that was detached; how do you know it was the same as the catch you saw on the bag?

(Objected to as tending to mislead the witness in what he has previously answered.)

A. I only looked at the catch; I did not make any further examination. I only saw that it was the same kind of catch that I first saw separate; it was just like it.

GOTTLEIB AMBS.

Subscribed & sworn to before me this 20th day of March, 1873.
JOSEPH GUTMAN, J'R,
Examiner.

Examination adjourned to March 21, 1873, at 11 a. m.
JOSEPH GUTMAN, J'R,
Examiner.

167 N. Y., *March* 21, 1873—11 a. m.

Present, representative of M'r Marshall.

Adjourned to 1½ p. m. to-day.

N. Y., *March* 21, 1873—1½ p. m.

Present, M'r Marshall, counsel for complainant, and M'r Betts, counsel for defendants.

Raphael Newman, a witness of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Marshall, of counsel for complainant, deposes and says as follows:

168 1. Q. What is your name, age, residence, and occupation?

A. My name is Rapheal Newmann; I am forty-six years of age. I reside at 64 West 9th st., New York, and am an importer and manufacturer, importer of leather and manufacturer of satchel-frames.

2. Q. Do you know William Roemer, the plaintiff in this action?

A. Yes, sir.

3. Q. How long have you known him?

A. I believe it is ten years; about ten years.

4. Q. Do you know anything of M'r Roemer's character for truth and veracity, and, if so, will you state what you know, and also what your means of knowledge are?

A. I believe him honest, and would trust him anything on his veracity. We are doing business with M'r Roemer since he has been in that line of business, and we find his dealings all correct.

169 5. Q. Would you believe him in his statements made in business transactions and otherwise?

(Objected to as incompetent.)

A. Yes, sir.

6. Q. Would you believe him under oath?

A. Yes, sir.

7. Q. What is his reputation in the mercantile community for a man of truth and veracity?

(Objected to as incompetent.)

A. So far as I know, it is very good.

And being cross-examined by M'r Betts, the witness says:

8. X Q. Is William Roemer indebted to you?

A. Yes, sir.

9. X Q. To a considerable extent?

(Objected to as incompetent.)

A. Some couple of thousand dollars.

10. X Q. Do you know that this suit is one in which he is endeavoring to recover for an illeged infringement of a patent of his for bag-catches?

170 A. Yes, sir.

11. X Q. Are you the M'r Newman of R. Newman & Co., with whom he has a contract in relation to having bag-catches made abroad?

A. Yes, sir.

12. X Q. Have you ever heard any persons speak disparagingly of M'r Roemer's veracity and truth about patent matters in which he is interested?

(Objected to as incompetent.)

A. No, sir.

13. X Q. Did you ever hear anybody say anything about his character for truth and veracity?

A. I heard several times from customers that they believe him in everything; that he is reliable.

14. X Q. Who did you hear say that?

A. Different parties with whom we are dealing. I don't recollect them now.

15. X Q. You don't recollect the names?

A. I don't recollect their names.

170½ X Q. When was it that you heard this said?

(Objected to as immaterial.)

A. I can't state that positively, the time.

17. X Q. How did it happen that these people whose names you don't know made the remark you speak of; what occasioned the remark?

A. In business transactions, people coming in to inquire about M'r Roemer. We sometimes inquire, too, and always heard that his character was good.

18. X Q. Did you ever ask anybody whether he was accustomed to speak the truth?

(Objected to as incompetent, the witness having already testified to these facts.)

A. I never did, because I believe him.

19. X Q. Anybody ever ask you?

A. No.

20. X Q. What did you inquire about him when people came in?

(Objected to as incompetent.)

A. Generally people came in to inquire about M'r Roemer.

171 21. X Q. Did you ever inquire of anybody about M'r Roemer?

A. No, sir.

22. X Q. Not about anything, either his character or truth?

(Objected to as having been testified to by the witness.)

A. No.

23. X Q. Then it is untrue when you stated, in answer to the 17 question, "We sometimes inquire, too, and always heard his character was good"?

A. We didn't need to inquire about M'r Roemer. I have done business with him since so long, and to our entire satisfaction, and I wouldn't trust to any man, or to M'r Roemer, anything if I wouldn't believe him in his veracity.

24. X Q. In answer to the 17 question you said, "We sometimes inquire, too, and always heard that his character was good;" that is not true, is it?

A. That is a mistake on my part, because there is generally inquiries made with us about him.

172 25. X Q. In answer to the 19 question, you were asked, "Did anybody ever ask you?" and you said, "No." Is that true?

(Objected to as not quoted correctly, and also that the question was put in an obscure manner, tending to confuse the witness.

Defendants' counsel requests the examiner to state whether or not the objection made by the complainants is true in fact.

Examiner states that the objection is not true in fact.

Complainant's counsel objects to examiner's ruling.)

A. I have been mostly asked on business matters, and found M'r Roemer always honest.

26. X Q. When was it you made this contract with M'r Roemer?

(Objected to as indefinite and incompetent.)

A. What contract?

27. X Q. When did you first enter into business with M'r Roemer—have any business transactions with him?

173 (Objected to as tending to mislead the witness, he not having testified that he has ever been in business with M'r Roemer.)

A. I believe it was in the year 1862; I believe it was in 1862.

28. X Q. You state, in answer to cross-question 11, that you are the M'r Newman, of R. Newman & Co., with whom M'r Roemer has a contract in relation to having bag-catches made abroad; is that so?

(Objected to, as the witness has already answered the question previously put in the same way.)

A. Yes, sir.

29. X Q. When was that contract made?

A. What contract was that?

30. X Q. When was the contract between R. Newman & Co. and William Roemer, the plaintiff, in relation to having bag-catches made abroad, made?

A. I don't recollect the time now; I believe it was in 1864.

174 31. X Q. What leads you to believe that it was made in 1864?

A. Well, I believe it was about the time when he began to make those catches.

32. X Q. What was your business at that time?

A. Importer of leather and frames.

33. X Q. Had you known M'r Roemer before?

(Objected to as having been asked and the witness having stated how long he has known M'r Roemer.)

A. I did; I knew M'r Roemer when he came to this country.

34. X Q. Had you seen bag-catches before you made the contract? State how long before.

(Objected to as incompetent on the rebuttal.)

A. I had seen before catches, but of different kind.

35. X Q. How long before the contract had you seen the catches patented by M'r Roemer?

(Objected to.)

175 A. I never have seen the catches before—the same catches.

36. X Q. You made the contract with him as soon as you saw the catches, the same day or month?

A. That I can't state. We made the contract when M'r Roemer took out the patent for those catches.

37. X Q. For what object was the contract made?

A. The contract was made that we couldn't make any frames or import any frames with the catches on without paying a royalty.

38. X Q. What other contract did you ever make with him with regard to bag-catches?

(Objected to as tending to confuse the witness.)

A. I can't recollect any more at present.

39. X Q. Did you make any contract at a later date, about 1867 or 1868, in regard to bag-catches?

A. I can't recollect.

40. X Q. Did you ever see a bag-catch sent out from the Paris
176 Exposition of 1867, after having been exhibited there?

A. No, sir.

And being re-examined by M'r Marshall, the witness—

41. Re-d. Q. You do not exactly remember the time that you made the contract, you say. Is that the contract you refer to as having made with William Roemer? (Counsel handing to witness def'ts' Exhibit 22.) And state whether or not you are mistaken in the time which you said in a previous question you thought it was.

A. This is the contract. I was mistaken in previous answer as to the time I made it.

42. R. D. Q. That is the only contract you or your firm made?

A. Yes, sir.

43. R. D. Q. Is the English language your common language?

A. I speak more German than English.

177 (Defendants' counsel requests examiner to state whether the witness speaks English correctly, and whether the answers he has recorded are in the words of the witness or improved by himself.

The examiner states that the witness speaks English correctly, and that the answers to questions are in the exact language of the witness.)

44. R. X Q. You state, in answer to question 33, "I knew M'r Roemer when he came to this country." How long after that did you know that he was interested in bag-catches?

(Objected to as incompetent.)

A. I believe it was about four years afterwards.

45. R. X Q. What were your relations with M'r Roemer before that time?

(Objected to as incompetent.)

A. Before what time?

46. R. X Q. What were your relations to M'r Roemer during the four years that you knew him—before you knew that he was interested in bag-catches?

178 A. We sold him leather and sold him goods.

47. R. X Q. Did you know during that time, and did you see in this country, the bag-catches which you say in answer to question 34 that you saw?

(Objected to, as no indication of what he said in answer to question 34, and also as incompetent.)

A. I have seen catches which we have imported of different style.

48. X Q. Until about four years after you knew M'r Roemer you had never seen any others?

A. I have not.

49. R. X Q. Are you sure that it was four years after you knew M'r Roemer that you first knew of his bag-catches?

(Objected to as incompetent, and as witness having already testified on the subject.)

A. I believe so.

50. R. X Q. State under what circumstances you first heard of them and saw them.

179 (Objected to as incompetent; the counsel having left, the witness has no right to re-examine on this subject.)

A. I heard of a new improvement in catches.

51. R. X Q. Under what circumstances?

A. I don't know what the meaning of that is.

52. R. X Q. When, where, and from whom did you hear of the new improvement in catches?

(Objected to as incompetent, and also to all further questions opening the matters which the witness has been interrogated on and testified to by counsel for defendants before he left his first examination.)

A. I heard it from M'r Roemer. I can't recollect the time exactly; in the city of New York, at our place of business.

53. R. X Q. State the year as nearly as you can.

A. I believe I have answered that question before.

54. R. X Q. State the year as nearly as you can.

180 A. It may be in 1864 or 1865. I don't recollect.

55. R. X Q. Are you sure it was not in 1866?

A. I can't say. I don't recollect any more.

56. R. X Q. Are you sure it was not in 1867?

A. I can't be sure now, because I can't recollect the exact date; it is no use to question me.

57. R. X Q. Are you sure it was not in 1868?

A. I can't give no better answer.

58. R. X Q. Was it in 1869?

A. Same answer.

59. R. X Q. When did you make this contract (def'ts' Exhibit 22) with M'r Roemer? (Handing said exhibit to witness.)

Answer. That was made in August, 1869.

60. R. X Q. Did you know M'r Roemer three years before that?

A. I did, sir.

61. R. X Q. Was he interested in catches for bags at that time; that is, in 1866?

181 A. I believe he was.

62. R. X Q. Did you know that he was?

A. Yes. I believe so, what I do recollect.

63. R. X Q. What do you recollect?

A. That he was making those catches.

64. R. X Q. You knew it, then, at the time?

(Objected to as incompetent.)

A. I believe so.

65. R. X Q. How long after that time did you make the contract with him?

A. I believe about two years after that.

66. R. X Q. It was some considerable time?

A. It was.

67. R. X Q. When did M'r Roemer take out the patent for catches?

(Objected to on the same ground as before, and as the patent speaks for itself, which is in evidence, and that the witness is not presumed to know, being another man's business; the patent being a matter of public record, which every one may know by referring to the records of the Patent Office.)

182 A. I don't recollect the date.

68. R. X Q. Did you or your firm make the contracts, def'ts' Exhibit 22, with M'r Roemer about the time he took out his patent?

(Objected to on ground that both are matters of record and already in evidence.)

A. I don't recollect any more; the patent was taken out before that time.

69. R. X Q. Did you know of it at the time he took out his patent?

(Objected to as incompetent.)

A. I can't recollect the exact day and year.

70. R. X Q. You state, in answer to question 36, "we made the contract when M'r Roemer took out the patent for those catches." Is that true?

(Objected to on the ground of counsel's question tending to mislead the witness, and that there is no evidence tending to show that the witness by "when" meant the exact time when he took out the patent, and that the counsel has exhausted the witness on that subject.)

183 A. It is true, because we have made a contract with him. I believe I have stated that before.

71. R. X Q. What you stated before, then, is true?

(Same objection as to next preceding question.)

A. I believe so.

72. R. X Q. You knew, then, at what time he took out his patent, and knew at the time that he took it out?

(Same objection as above.)

A. I believe I have answered that question too.

73. R. X Q. You knew, then, at the time he took out his patent that he took it out?

(Same objection as above.)

A. At the time he took it out, I knew then.

74. R. X Q. Did you make the contract with him at that time?

(Same objection as above.)

A. I believe I have stated so before.

75. R. X Q. He took out his patent, then, in 1869?

184 (Objected to on the ground that the witness has not so stated and that there is no such evidence, and that the questions are put tending to mislead the witness.)

A. He took it out when he applied for the patent.

76. R. X Q. How long is it since you have been in Europe?

A. In Europe last year.

77. R. X Q. When were you there before?

A. I believe two years before.

78. R. X Q. Did you know M'r Mueller when you were in Paris?

(Objected to as incompetent.)

A. I did not.

79. R. X Q. Did you know a M'r Morage a' Paris, a manufacturer of travelling-bags?

(Same objection.)

A. I did not.

80. R. X Q. You know who he is?

(Same objection.)

A. No, sir.

185 81. R. X Q. Did you never receive trimmings from him?

(Same objection.)

A. Not that I know of.

82. R. X Q. From what firms in Paris have you received trimmings?

(Same objection.)

A. I received trimmings from M'r Steinmetz.

83. R. X Q. From whom else?

(Same objection.)

A. I don't recollect from anybody else.

84. R. X Q. Did you ever receive side-catches from them?

(Same objection.)

A. We received catches in bags the same catches as Roemer's patent, and years we imported another catch, different.

85. R. X Q. When was this years before that you have mentioned?

A. May be three or four years before that.

86. R. X Q. Before what?

186 Before Roemer's patent catches.

87. R. X Q. Please substract the three or four years from the date of Roemer's patent, and tell when you first saw them.

A. I never saw Roemer's catch before.

88. R. X Q. Explain yourself; before what?

A. Before we imported catches of different style.

89. R. X Q. The question is how long before you saw Roemer's catches you saw those imported?

A. Before I saw Roemer's catches we imported frames with a catch made by Steinmetz, which was quite different.

90. R. X Q. How different?

(Objected to *in* same ground as before.)

A. There was no comparison of these catches.

91. R. X Q. Explain the difference.

(Same objection.)

A. The catches being turned downward, different made entirely. I can't explain it so well.

187 92. R. X Q. Look at Exhibit 23, and state which of the drawings is like a catch you saw in Europe before M'r Roemer took out his patent.

(Objected to as put for the purpose of misleading the witness, and on same grounds as to previous questions on this recross-examination, and that the witness has made no such statement as is included in the question.)

A. I didn't see neither.

Examination of witness closed.

RAPHEAL NEWMAN.

Sworn to before me.

JOSEPH GUTMAN, J'R.
Examiner.

Examination adjourned to March 22, 1873, at 10 a. m.

188 N. Y., *March 22d*, 1873—10 a. m.

Present, counsel as before.

HENRY G. ELY, a witness of lawful age, produced on the part of the complainant, having been by me duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Marshall, of counsel for complainant, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Henry G. Ely. I am forty-nine years of age. I reside at 104 William street, Brooklyn, and am a dealer in hides and leather.

2. Q. Do you know William Roemer, the plaintiff in this action, who is now present; and, if yea, state how long you have known him?

189 A. I know him. I have known him for seven years—seven
years this month, I think.

3. Q. What do you know respecting M'r Roemer as a man of truth and veracity?

A. I have the highest confidence in M'r Roemer in regard to truth and veracity. I have never heard it brought in question; our dealings with him have been on a liberal scale for the last six years. I have always found him to do precisely as he agreed in every respect.

4. Q. Would you believe him under oath?

A. Yes, sir.

5. Q. Where is your place of business?

A. No. 2 Jacob st., in this city.

6. Q. What is your firm-name?

A. H. G. Ely & Sanger.

7. Q. Are you engaged extensively in trade?

A. Yes, sir.

8. Q. In what particular business?

A. We carry on a tannery; we manufacture largely leather for
190 bag purposes, shoe purposes, saddler's leather, and do a general
commission business in the leather line.

9. Q. Do you deal extensively with Newark manufacture?

A. Yes, sir.

10. Q. Do you make a practice or not of inquiring respecting the reputation of those to whom you sell goods?

A. Always, unless we know them of our own knowledge.

11. Q. Do you sell goods to others in the same business that M'r Roemer is in?

A. Yes, sir.

12. Q. To his competitors?

A. Yes, sir.

13. Q. Have you ever heard his character questioned by any of them as to truth and veracity?

A. Never.

14. Q. What is his standing among them?

191 A. So far as I know, it is good; they speak of him as enterprising
and industrious.

And, being cross-examined by M'r Betts, the witness says:

15. X Q. In answer to question 3, asking what you knew respecting Mr. Roemer as a man of truth and veracity, you say, "I have never heard it brought in question;" do you mean that you have never heard it discussed?

A. Yes, sir.

16. X Q. Your knowledge of his character, then, is derived entirely from your own experience in dealings with him?

A. Both from my own experience and from remarks made by others; in speaking of him in a general way, as to his responsibility, always included his integrity, as that is one point that we always insist upon.

17. X Q. Do you recall the names of any of those parties?

A. Yes, sir. M'r Jenkinson, M'r Lagowitz, I have heard speak
192 of him. I can amplify that answer, if you choose to have it, by
saying that I have known of no circumstance wherein the special
question of his truth and veracity would be brought out, or any occasion for its brought into question.

18. X Q. Besides your own confidence in him, you only know in a

general way, from never having heard it doubted, or called in question, or discussed, that others, too, have confidence in him?

A. These parties that I have heard speak of him have spoken in the way I have answered the other question, as an honest, industrious man, hard-working, &c.

19. X Q. But in regard to his truth and veracity, you say, in answer to question 17, "I have known of no circumstance wherein the special question of his truth and veracity would be brought out." Now, apart from his other good qualities, did you ever hear any of the gentlemen referred to in said answer say anything about his truth and veracity; if so, what?

193 (Last clause of question objected to, as witness has answered it to a previous question directly put to him, embodying that.)

A. Not in that language, but I suppose that a man who has the reputation of being a man of integrity must necessarily be a man of truth and veracity. I think the word integrity would necessarily include those qualities in a man; it certainly would in my estimation.

20. X Q. What has been the character of your dealings with M'r Roemer?

A. Selling him leather, &c. Always found him do just as he agreed, punctually, with unwonted punctuality.

21. X Q. Do you ever have any dealings with him in relation to patent matters in which he was interested?

A. No, sir.

HENRY G. ELY.

Sworn to before me.

JOSEPH GUTMAN, J'R.,
Examiner.

194 AUGUST SCHNEIDER, a witness of lawful age, produced on the part of the complainant, in answer to the witness Louis Hebrecht's testimony relative to alleged bag-catches, as shown in def'ts' Exhibit 23, subject to the rulings of the court as to the admissibility of that testimony, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Marshall, of counsel for complainants, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is August Schneider. I am forty-five years of age. I reside at 54 Beekman s't, Newark, New Jersey, and am a bag-maker.

2. Q. Did you ever work for any man by the name of Levy, in Newark?

A. I worked for a man named Isidor Levy.

3. Q. When and where?

A. In 1864, in Market s't, Newark, New Jersey.

195 4. Q. Please state, as near as you recollect, about when you commenced working for him, and how long you were with him.

A. About two years, and may be a little more; commenced about the fall of 1864, about October or November, and worked for him two years.

5. Q. What was your business when you worked for him?

A. Bag-making.

6. Q. What particular part or branch of the business did you attend to?

A. Do the general work, cutting, filling, and finishing, for the first part of the time I worked there.

7. Q. And for the rest part, what ?

A. I was foreman of the shop.

8. Q. Please look at this paper, def'ts' Exhibit 23, and to the drawings thereon, and state whether or not during the time you worked for Isidor Levy you either saw or knew of any bag-catches in his possession, either on bags or otherwise, resembling or like either of the catches on that paper. (Handing witness said exhibit.)

196 A. I haven't, so far as I can recollect, seen a catch marked "No. 2." No. 1, may be, was done or used in the latter part when I worked there in 1866 or 1867, but I ain't sure.

9. Q. Look at def'ts' Exhibit 25, (handing same to witness, being a brass plate,) and state what you know, if anything, in regard to the use of such plates.

A. I don't know anything at all ; I never saw it before.

10. Q. Do you mean that particular plate ?

A. I do, and don't know the use for it, either.

11. Q. State whether or not plates like, or something like, that were used on travelling-bags for fastening the handles or rings upon bags.

A. Have to be made in different shape from the sample ; flat plates like sample ain't no use at all.

12. Q. What would have to be done to it to make it of use ?

197 A. It has got to be bent up in the centre to leave room enough to get a ring through.

13. Q. When these plates are made in that way, then what are they used for ?

A. Putting under rings for handles.

14. Q. Name any other purposes—all others that you think of.

A. May put some side-catches under, but they have got to be very thin.

15. Q. State whether or not Isidor Levy, whom you worked for, was associated ever with Henry Drescher, in Newark.

A. Yes. So far as I know.

16. Q. What do you mean by so far as you know ?

A. I haven't seen their writ*ing* contract.

17. Q. They worked in the same shop, did they ?

A. Yes, sir ; they did.

18. Q. About when ?

A. 1866 or 1867. I ain't sure.

19. Q. Do you know Isidor Levy now ?

A. I do, sir.

198 20. Q. Do you know where and for whom he works now, or is with ? If so, state.

A. He works for Simon & Brothers, at Newark, New Jersey.

21. Q. What Simon & Brothers ?

(Objected to as irrelevant.)

A. Trunk and bag manufacturers at Newark, New Jersey.

22. Q. What is the name of Simon in that firm ?

(Same objection.)

A. Edward Simon.

22. Q. Are there any other Simons in it but Edward ?

(Same objection.)

A. I believe William and Samuel.

23. Q. Are either of them present ?

(Same objection.)

A. M'r William Simon.

And, being cross examined by M'r Betts, deposes and says as follows:

199 24. X Q. Did you work for M'r Levy after he joined M'r Drescher, or did you leave his service before that time?

A. I worked for Isidor Levy when he was in partnership with M'r Drescher.

25. X Q. How are plates for fastening in catches made before they are bent in the centre, and what is their first form?

A. I don't know.

26. X Q. Did you ever see one unfinished?

A. I did not.

27. X Q. How do you know they are bent up in the centre?

A. They got to be, or else wouldn't be no good.

28. X Q. Are they bent after being stamped or stamped in bent form?

A. I don't know anything about that; never saw that kind of work.

29. X Q. Were those like No. 1 in Exhibit 23, which you think you saw at M'r Levy's during the last part of the time that you were there, fastened on by plates, or how?

200 A. I couldn't recollect any more if I did see them or not?

30. X Q. What makes you think they were like No. 1 rather than like No. 2?

A. No. 1 I saw every day; No. 2 I never saw before.

31. X Q. Who made those that you saw then?

A. I don't know.

32. X Q. Of what metal were they made?

A. I don't know.

33. X Q. Are you sure they had no ring attached, as in No. 2?

A. I am.

34. X Q. Were they on bags or off them?

A. I never saw any.

35. X Q. Were those like No. 1 that you saw on bags or off them?

A. I didn't say that I ever saw any on bags at the time I worked at Levy's.

201 36. X Q. Were they off bags?

(Objected to as incompetent.)

A. I don't remember.

37. X Q. You remember seeing them?

(Objected to as tending to confuse witness by the indefiniteness of the question.)

A. I don't believe when I worked for Levy · I mean those catches No. 1.

38. X Q. With whom have you worked since you left M'r Levy?

A. I worked for August Steib and William Roemer.

39. X Q. How long have you worked for William Roemer?

A. Three or four years.

40. X Q. Is this William Roemer the plaintiff in this action?

A. The very same.

41. X Q. Do you work for him still?

A. I do.

202 42. X Q. Has he been present during your examination to-day?

A. He has.

43. X Q. How long have you known M'r Louis Hilbrecht?

A. Don't know the gentleman at all, not that I know of.

44. X Q. Are you interested in this suit?

A. No, sir.

45. X Q. How do you happen to be here testifying?

A. I offered my testimony to M'r Roemer.

46. X Q. When was that?
A. A short time ago.
47. X Q. How long?
A. Several days.
48. X Q. How long has this suit been in progress?
(Objected to as incompetent and irrelevant.)
A. That's more than I know.
49. X Q. Why did you not offer your testimony before?
(Objected to as irrelevant.)
203 A. I didn't think of it.
50. X Q. Did M'r Roemer ask you to testify?
A. No, sir.
51. X Q. Did any one ask you to testify?
(Objected to.)
A. No, sir.

And being re-examined by M'r Marshall, of counsel for complainant, the witness says:

52. R. D. Q. You say, in answer to question 30, "No. 1 I saw every day;" what do you m'an by that?
A. I didn't say saw; I see them every day; I couldn't say saw.
53. R. D. Q. You say that you know William Roemer, the plaintiff in this suit, in your cross-examination. Do you know the defendant Edward Simon & Brothers?
A. Yes, I do.

And being recross-examined by M'r Betts, the witness says:

204 54. R. X Q. How much does M'r Roemer, your employer, give you for wages?
(Objected to as immaterial, incompetent, witness having been exhausted by the defendant, and no matters in redirect calling for any such question or evidence thereunder.)
A. Fourteen dollars per week.
55. R. X Q. Do you receive anything from Edward Simon & Brothers?
A. I don't understand that question at all.
56. R. X Q. Do they pay you any money?
A. Who?
57. R. X Q. Edward Simon & Brothers.
A. I am with William Roemer, not with Edward Simon & Brothers.
58. R. X Q. Do you receive anything from M'r Roemer for testifying to-day?
A. No, sir.
59. R. X Q. When did he ask you to come to testify?
(Objected to as incompetent, and as having testified as to how he came.
205 Defendant's counsel objects to plaintiff's counsel refreshing witness' mind in his objection.)
A. He didn't ask me at all. I offered my testimony myself.
60. R. X Q. Have you read the testimony in this suit?
A. I never saw any writing or printing in this suit.
61. R. X Q. How did you happen two or three days ago to think of offering to testify?
A. I saw another man from Roemer's hands, and I said "I think I can do the same."
62. R. X Q. Who was he?
A. Frederic Ambs.

63. R. X Q. Had he testified?
(Objected to as incompetent and immaterial.)
A. I believe so.

64. R. X Q. Did he tell you what had been the character of his testimony?
A. He did not.

206 65. R. X Q. Who did?
A. Nobody told me his testimony. I only heard him say that he was in that day at the commissioner's office and gave his testimony in Roemer's suit.

66. R. X Q. What did he testify to?
A. That is more as I know.

67. R. X Q. What did you mean when you said to him "I think I can do the same?"
A. I meant that I could tell all about what I know about those catches.

AUGUST SCHNEIDER.

Subscribed and sworn to before me this 22d day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

207 George B. Jenkinson, a witness, of lawful age, produced on the part of the complainant, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein; and, being examined by M'r Marshall, of counsel for complainant, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?
A. George B. Jenkinson; I am forty-four years of age; I reside in Newark, New Jersey, at 629 High street, and am a trunk and bag manufacturer.

2. Q. Are you in business by yourself or in company?
A. I am interested with Thomas B. Peddie.

3. Q. What is the name of the firm?
A. T. B. Peddie.

4. Q. Do you know William Roemer, the plaintiff in this
208 action, now present?
A. I do.

5. Q. Do you know anything relative to his character as regards truth and veracity? And, if so, please state what his reputation is as to truth and veracity.
A. I have always understood Mr. Roemer to be a man of truth and veracity, and a man standing well in the business community as to truth & veracity.

6. Q. Would you believe him under oath?
A. I have no reason to disbelieve him under oath.

7. Q. How long have you known him?
A. I think about twelve years; eleven or twelve years.

8. Q. Does he bear a good character in the community, in your city?
A. I have never heard anything derogatory as to M'r Roemer's character.

And being cross-examined by M'r Betts, he deposed and says as follows:

209 9. Q. Have you heard explicit statement in regard to M'r Roemer's truth and veracity, or do you regard him only in the same general was as other business men of good standing?

A. I regard him in the same way as other men of good business standing.

10. Q. Did you ever hear his truth and veracity discussed, for or against?

A. I have never heard it called in question.

11. Q. Were you ever interested in patent-matters with which M'r Roemer had an interest?

A. No.

12. Do you know parties who are or have been interested or connected with him in patent-matters?

A. No.

GEORGE B. JENKINSON.

Subscribed and sworn to this 22d day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner, &c.

210 Further examination adjourned until Monday, March 24, 1873, at 11 a. m.

JOSEPH GUTMAN, J'R,
Examiner.

N. Y., *March* 24, 1873.

Present, counsel for the respective parties.

Examination adjourned sine die.

JOSEPH GUTMAN, J'R,
Examiner, &c.

211 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Joseph Gutman, j'r, an examiner in equity, duly appointed, in the circuit court of the United States for the southern district of New York, do hereby certify that the foregoing are the depositions taken on the part of the complainant in the cause in the caption named under and pursuant to the 67th rule in equity.

N. Y., March 24, 1873.

JOSEPH GUTMAN, J'R,
Examiner, &c.

212 Circuit court of the United States for the district of New Jersey. In equity.

WILLAM ROEMER
vs.
EDWARD SIMON, WILLIAM SIMON, SAMUEL Simon, and Morris Schwerin.

Proofs for final hearing taken on the part of the defendants under and pursuant to the 67th rule in equity before Joseph Gutman, j'r, examiner, N. Y., January 14th, 1873—11 a. m. Presents, Frederic H. Betts, esq., counsel for defendants, and Jonathan Marshall, esq., counsel for complainant.

EDWARD TAYLOR, a witness of lawful age, produced on the part of the defendants, having been by me duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says *and* as follows:

(Counsel for complainant states that the witness Roemer desires to correct herein a certain testimony heretofore given by him, to wit, that portion relating to the suit commenced against Edward Simon Brothers in 1869.)

1. Q. What is your name, age, residence, and occupation?

A. My name is Edward Taylor; I am 37 years old; I reside at 37 Barrow street; I am a trunk-maker.

2. Q. How long have you been in the trunk-business?

A. Since 1850, twenty-three years.

3. Q. With whom did you commence business as a trunk-maker and in what capacity?

A. With M'r John Hill, as a trunk-maker. I went there to learn the business.

4. Q. Is M'r Hill here present to-day?

A. Yes, sir.

5. Q. Where was M'r Hill's place of business when you went with him in the year 1850?

A. At the corner of Warren st. and Broadway.

6. Q. Which corner, and in what part of the building?

A. The upper corner, going up Broadway, in the basement.

7. Q. How long did you work with M'r John Hill at the corner of Warren st. and Broadway?

A. From 1850 to 1857.

213 8. Q. What part of 1857?

A. I think it was in the fall or spring; I wont be sure which; as near as I can recollect, it was in the fall.

9. Q. Where did you go to then?

A. To 10th st. and Broadway.

10. Q. Who did you work for there?

A. M'r Hill.

11. Q. Did he move his establishment to that place at that time?

A. He moved there in the spring of 1857 or 1858; I am not sure which; I can't say exactly.

12. Q. How long did you work for him there?

A. I think I worked for him there until 1860.

13. Q. What time in 1860?

A. I wont be sure whether it was in the spring or fall.

14. Q. Did you leave M'r Hill's employment before or after the war with the Southern States?

A. Before.

15. Q. After leaving M'r Hill what did you do?

A. I went to work at the corner of Charlton and Hudson st. with M'r Ralph Bogert. I worked with him about 2 or 3 months, and then I went up the corner of Hudson and Barrow st. with James Bogert. I stayed there until 1862, and in August, 1862, I enlisted for the war. I was discharged out of the army on the 15th of June, 1865. After I came back I went to work with James Bogert again and have been the*ir* ever since. His son, Jacob A. Bogert, now has the business.

16 Q. From 1850 to 1857, while you were working for M'r Hill at the corner of Broadway and Warren st., did you do any business in repairing bags?

A. Yes, sir; often.

17. Q. Did you ever put any catches upon travelling-bags for the purpose of holding their jaws together?

A. Yes, sir.

18. Q. Will you please describe what kind of catches you put upon

travelling-bags for the purpose of holding their jaws together while you were in M'r Hill's employment at the Warren st. establishment.

A. I would take a buckle and cut it in two so as to make a piece for each end, and fasten it on with a piece of brass on the top of the frame. I also made them out of brass wire if I did not have a buckle in the office that would suit.

19. Q. Look at the specimen bag now shown you with a catch fixed thereto and state whether or not that catch is identical with the catches you have refered to.

(Objected to as leading.)

A. It is similar, only a little neater on the top here; of course that don't matter much.

20. Q. What do you mean by saying it is similar?

A. Similar in construction.

21. Q. In what respects is it similar in construction to the catches which you put on between 1850 and 1857?

A. To hold the ends of the bag together.

22. Q. In what respects, if any, does it differ?

A. I don't know as it differs any, only sometimes we would make them out of buckles; cut a buckle in two; the principle is the same to hold a bag together.

23. Q. How were you accustomed at that time to fasten the buckle to the jaws of the bag?

214 A. We put a brass plate across them something similar to that. (Indicating the plate on bag shown him.)

(Defendants' counsel offers the bag refer'ed to by the witness in evidence.

It is marked def'ts' Exhibit 2.)

24. Q. Where the pieces of buckle fastened to the frame of the bag in any other way than by the strap which you have spoken of?

A. No, sir; not those that I done.

25. Q. What part of the catch was it that held the jaws of the bag together?

A. The prongs.

26. Q. To what part of the frame of the bag were you accustomed at that time to apply these catches?

A. On the top part of the frame; those that I did.

27. Q. Did you apply them at the center or near the corners?

A. On each end.

28. Q. Did you always apply two?

A. No, sir; if one was broken off, when the bag came in, we would put one in its place.

29. Q. I mean, did the bags which you repaired always have two catches on them when you had finished them?

A. No, sir; some came in with the lock broken, and had none at all on; then we would put them on.

30. Q. When there were none on the bags how many did you put on and where did you put them?

A. Two are at each end and right at the top of the frame.

31. Q. Look at the complainant's patent, marked compl't's Exhibit A, and state whether the catches there shown applied to the frame of a travelling-bag are any different from the catches which you applied when in M'r Hill's employ between 1850 and 1857.

(Objected to on the ground that the witness is not being examined as an expert now shown to be competent to answer the question, and that it is not competent for him to answer the question.)

A. I don't see any difference, only of course they are got up a little neater.

32. Q. *One* they shown applied to the frame in that patent in any different position from the position that you placed them in at the time mentioned ?

(Same objection.)

A. No, sir; I don't see any difference at all.

33. Q. Will you please narrate the particulars of the first instance that you remember that you put on such catches to a travelling-bag ?

A. Remember doing one for a gentleman in the Irving House.

34. Q. Was this before or after M'r Hill's establishment was moved from Broadway and Warren to Broadway and Tenth street ?

A. Before.

35. Q. Where was the Irving House at that time ?

A. At the corner of Broadway and Chambers street.

36. Q. Please state, if you remember, what kind of a bag it was to which you applied these catches, how it happened that you applied them, how you made the catches on that instance, and to what part of the frame you applied them.

A. It was a black leather bag; the lock was broken. I made those catches in that instance out of a piece of iron wire. I applied them on the top of the frame the same as in Exhib*e*t 2.

37. Q. Who told you to make the catches in that way ?

A. M'r Hill.

38. Q. Did you during the time that you were in the Broadway and Warren st. establishment see any bags with catches of the same kind upon them ?

A. Yes, sir; I saw foreign bags.

215 39. Q. Will you please describe how the catches were constructed and applied on those foreign bags ?

A. They came down on each side like in Exhib*e*t 2, and were fastened on top by a plate.

40. Q. What was the catch made of in the case of those foreign bags ?

A. Mostly generally brass.

41. Q. Please look at the bag now shown you having catches thereupon, and state how that bag with the catches applied to the same resembles or differs from the foreign-made bags which you saw while in the Broadway and Warren st. establishment.

(Objected to on the ground that it is leading and that the witness has not been put on the stand as an expert.)

A. The one I saw at corner of Broadway and Warren street, the handle was by itself and the catches were put on separate.

42. Q. Did you see more than one foreign-made bag with such catches applied while you were in the Warren st. establishment ?

A. Yes, sir.

43. Q. You said that the catches were put on separate from the handles on those bags; how did the catches themselves and the place of their application to the bag correspond with the bags shown you ?

A. The catches were outside of the handle on the frame; the catches were something similar.

44. Q. What do you mean by something similar ?

A. In construction and make.

45. Q. How did they differ from this one, if at all ?

A. They did not differ at all, only the American are lighter.

(Defendents counsel offers in evidence the bag refer'ed to. It is marked def'ts' exhibit No. 3, J. G., J., Exh.)

46. Q. What do you mean when you say the American are lighter?

A. Not so heavy and neater than that.

47. Q. What did you refer to when you spoke of the American?

A. I mean the style used on bags at the present time.

48. Q. Did you mean that the catches on this bag, Exhibit 3, are any lighter then the ones you saw on the foreign-made bags price to 1857?

A. About the same thing.

49. Q. After you moved to the corner of Broadway and Tenth street, and while you were at that establishment up to 1860, did you see any more foreign-made bags with catches like those on Exhibit 3?

A Yes, sir.

50. Q. Did you put on any more catches such as you have described and illustrated by Exhibit 2 while you were in the Tenth st. establishment?

A. I or M'r Hill would do it.

51. Q. Did you put on more of those catches as described while you were in the Tenth st. establishment or in the Warren street establishment?

A. Tenth street, because we had more general jobbing there.

52. Q. Did you see more of these foreign-made bags in the Tenth street or the Warren street establishment?

A. Most in Tenth street.

53. Q. Did you ever make any of these catches for bags while you were working at the corner of Charlton and Hudson street after leaving M'r Hill in 1860, and before going to the war?

A. No, sir.

54. Q. Did you ever make any of these catches while working for M'r James Bogert before going to the war in 1862?

A. No, sir; because I did not do his jobbing. I only did his work. The jobbing he did himself.

216 55. Q. After you come back from the war in 1865 did you make any of these catches?

A. No, sir; I just worked at my bench.

56. Q. Did you see these catches in the market when you came back from the war in 1865?

A. No, sir; I did not see them in the market until about a year afterwards, I think it was.

57. Q. Do you know how M'r Hill was accustomed to enter in his books the work done for putting on the catches you have spoken of?

A. Yes, sir; if it was repairing; it was put down "job" and jobbing.

58. Q. Will you look at the books now shown you and state whether any of those books are books kept by M'r Hill in his business while in the Warren or Tenth street establishments?

A. One is an order-book kept at Tenth street and Warren street both. (It is marked Def'ts' Exhibit 4.) Another is the stock-book kept, I think, at the Warren st. establishment. (It is marked Def'ts' Exhibit 5.) The other is a sales-book kept by M'r Hill at both Warren street and Tenth street establishments. (It is marked Def'ts' Exhibit 6.)

(Counsel for complainants objects to the question and answer and to the introduction of the books as immaterial.)

And being cross-examine' by M'r Marshall, complainant's counsel, he says:

59. Q. What is your age?

A. I am 37 years old.

59. Q. Where is your native place?

A. England.

60. When did you come to this country?

A. I have been here 29 years on the first of next April.

61. Q. With whom did you come to this country?

A. I was sent here by an uncle, and was put in charge of the captain of the ship.

62. Q. And what place did you come when you came here?

A. To New York.

63. Q. Have you lived in any other place than New York except when you were in the army?

A. No, sir; I have lived in this city ever since, except 3 years when I was away at the war.

64. Q. What regiment did you enlist in? Please name the company, captain, and colonel.

A. Ninth New York, Hawkins' Zouaves; Col. Rush C. Hawkins; Company G, Captain Childs.

65. Q. How long did you serve in this regiment?

A. Nine months. I was then transferred to the 3d New York, at Fortress Monroe. I stayed in that regiment until I was discharged.

66. Q. Please name the company, captain, and colonel.

A. Company . I forget the colonel's name. I have forgotten also the captain's name.

67. Q. Did you serve in any other regiments than these two?

A. No, sir.

68. Q. You say you did repairing of travelling-bags previous to the war and would take a buckle for a catch. What kind of a buckle would you take?

A. Most generally an iron one—what we call a roller-buckle.

69. Q. How many bags did you repair in this way?

A. Several.

70. Q. For whom did you repair these bags or any of them?

217 A. I never asked the persons their names; they would bring them in and I would repair them and they would call for themselves.

71. Q. Did you put the catch upon the bag marked "Exhibit?"

A. No, sir; I did not put that on.

72. Q. Do you know who did?

A. No, sir.

73. Q. You say that the one that you put on was something similar. Please explain how similar.

A. In keeping the two ends of the bag together, so as to keep the straw off the lock, or if the lock was broken we would put them on each end.

74. Q. Have you seen any of the bags that you say you thus repaired since repaired them?

A. Yes, sir.

75. Q. Where?

A. Brought into the shop to be repaired a second time; not the same bag; different bags.

76. Q. These repairs were not allways repairs of that kind; repairs of different kinds, you mean?

A. Whenever we had a bag where the lock was broken we would put these on each end.

(Objected to as not responsive to the question by complainant's counsel, and

77. Q. Question repeated.

A. Different kinds of bags.

(Objected to by complainant's counsel as not responsive, and)

78. Q. Question again repeated.

A. That is the only answer I can give you: the bags that came in had the locks broken in various ways and I fixed the bags.

(Objected to as not responsive by complainant's counsel.)

79. Q. Did you not repair locks to bags also?

A. Yes, sir.

80. Q. Bags were brought to you with broken locks and put on new locks, did you not?

A. Yes, sometimes; and sometimes we repaired them when the locks were not much out of order.

81. Q. Then your repairing of bags was various kinds of repairing, was it not?

A. Yes, sir.

82. Q. What was the gentleman's name at the Irving House for whom you say, in your direct examination, you repaired a bag?

A. I do not know.

83. Q. Did you see any of the bags on which you put catches after they left your shop for repairs?

A. No, sir; not that I know of.

84. Q. Can you give the date of any of these times at which you put these buckles on as catches?

A. No, sir; I cannot give the exact date.

85. Q. You say in your direct examination that the catch on this bag, Exhibit 2, is similar to the one that you put on; it is not exactly like the one that you put on?

A. No, sir; not exactly like it.

86. Q. You were accustomed to put on vairous kind of catches in repairing bags, were you not?

A. Sometimes we would make them out of brass wire, sometimes out of buckles, sometimes out of iron wire, just according to what we had in the shop.

87. Q. Did you ever see bags with any other kind of fastenings on than the fastenings like that on Exhibit 2 at the time that you worked at Warren s't and Broadway?

A. No, sir.

218 88. X Q. Did you never see bags with a staple and a lock to fasten the jaws together?

A. I have seen them with a staple on each end and a rod run through them, and a padlock on one end to fasten them, similar to a mail-bag.

89. X Q. Were there not at that time, to your knowledge, bags having various kinds of fasteners, besides locks for holding the jaws together?

A. Not that I know of.

90. X Q. Then, you knew of no other way at that time of holding the jaws of bags together than by locks and padlocks and the way that Exhibit 2 is fastened together?

A. I knew of no other way of holding them together, when the lock was broken and we could not repair it; that was the only way we could fix it.

91. X Q. Did M'r Hill make traveling-bags?

A. Sometimes.

92. X Q. Here at the shop, in Warren street and Broadway?

A. Yes, sir.

93. X Q. What kind of bags did he make?

A. Leather, carpet, and canvas.

94. X Q. How many workmen did he employ?

A. Sometimes more and sometimes less.

95. X Q. Well, about how many, to the best of your knowledge?

A. Sometimes three, sometimes four, according to how the business was.

96. X Q. What were the names of the workmen employed there while you were there?

A. John Thorn was one, Cornelius Hogan was another.

97. X Q. When did these persons work there?

A. At the time I was working there; I cannot tell you what year exactly.

98. X Q. What was their business in the shop?

A. Two worked at the bench and the other ran of errands, and we had a boy besides.

99. X Q. These two that you have named worked at the bench, did they?

A. Cornelius Hogan did not; he ran on errands. John Thorn and myself worked at the bench.

100. X Q. You and John Thorn did repairs in the shop, did you?

A. No, sir; John Thorn worked in Hudson street, I worked in Warren street.

101. X Q. Were these two shops carried on at the same time?

A. Yes; he left a shop in the basement of the house where he lived, only for manufacturing; that was the Hudson street place, where he lived.

102. X Q. Who else worked in the Warren street place with you?

A. M'r Hill and Cornelius Hogan.

103. X Q. What did Cornelius Hogan do?

A. Ran of errands, and did different jobs around the shop; he did not work at the bench.

104. X Q. Did M'r Hill make traveling-bags for the trade?

A. He made them for retail.

105. X Q. How many rooms did he use at the corner of Warren street and Broadway?

A. One, the basement.

106. X Q. When did he remove from Warren street to Tenth street and Broadway?

A. I think it was in 1857.

107. X Q. And you went with him?

A. I went with him when he moved from there.

219 108. X Q. And remained there till you went to the war?

A. No, sir.

109. X Q. How many rooms did he use at Tenth street and Broadway?

A. One, the basement.

110. X Q. How many workmen did he employ there while you were there?

A. Myself, M'r Hill, himself, and an errand boy.

111. X Q. Did he make traveling-bags there?

A. Sometimes, when ordered.

112. X Q. While he was there, to your knowledge, did he make traveling-bags at any other place?

A. Not to my knowledge.

113. X Q. What was the name of the persons in his employ at Tenth street and Broadway, while you were there?

A. There was no person there but myself and M'r Hill and a boy at that time.

114. X Q. Do you remember whilst you were there of having put catches on traveling-bags at that place, at Tenth street and Broadway?

A. Yes, sir.

115. X Q. For whom?

A. I cannot tell the parties' names that brought them in; it would be an impossibility for me to remember all their names.

116. X Q. How many did he put on there?

A. I could not tell the exact number.

117. X Q. Can you give the exact description of the catches you put on?

A. Not the exact description; they were something similar to that on bag, Exhibit Q, only more neatly put on.

118. X Q. How do you mean more neatly?

A. We would bend down the plate more neatly, so that it would not shake.

119. X Q. Can you tell whether or not both sides of the catch, or the catch on both sides of the jaw, came down below the top of the jaw or not?

A. Both sides came down like that on Exhibit Q. If you only put it on one side, you could not fasten it there; you had to have both sides of that kind of a catch.

120. X Q. Do you know of any of those catches that you say you made then that are now in existence?

(Objected to, for the reason that the witness would not be likely to know of the existence of particular bags of that kind.)

A. I do not.

121. X Q. There were never any returned to you after you made them?

A. When I fixed them I fixed them good, so that they would not be returned.

122. X Q. Were you in the habit, while you were at work for M'r Hill, of noticing different kinds of traveling-bags, and the manner in which they were made, of different manufacturers?

A. I only noticed them when they came in, the way they were made; the manufacturers we would seldom ever look at.

123. X Q. That is, you did not look to see who the manufacturer of the particular bag was?

A. No, sir; we did not care, either.

124. X Q. And since 1850, when you went to M'r Hill's to work, with the exception of the time you were connected with the Army in the war, you have been engaged or employed in the traveling-bag and trunk business, have you?

A. No, sir; I am not in bag-making at all. I have been engaged in making trunks.

220 125. X. Q. How long have you known these defendants?

A. I have known M'r Hill since 1850; since I first went to work with him.

126. X Q. How long have you known the defendants, or any of them, in this suit?

A. I have known M'r Hill since 1850, and Mr. Simon I have known about a year.

127. X Q. When was your attention first called to the matters in this suit?

A. It must be pretty near a year, as near as I can judge.

128. X Q. And then you began to think over whether you had ever made or repaired catches similar to the one on Exhibit 2, did you ?

A. Yes, sir.

129. X Q. Who called your attention to it ?

A. M'r Hill.

130. X Q. About when was that ?

A. About a year ago, I should judge, as near as I can think.

131. X Q. Have you ever worked at this business for any others, except M'r Hill, at the places you have named, and the Bogerts, with whom you are now employed ?

A. Yes, sir.

132. X Q. Name the different parties ?

A. William Strong, that is the only one.

133. X Q. At what place, and what business ?

A. Corner of Warren street and Broadway, after M'r Hili had sold out—at the same business.

134. X Q. How long did you work for him ?

A. About three months.

135. X Q. Did you ever know of any manufacturer of traveling-bags using on their bags catches like the one described in the drawings of letters-patent, complainant's Exhibit A, previous to the year 1866 ?

A. I don't know of any manufacturers using them—not that style.

136. X Q. Well, any style like them ?

A. Nothing in that shape.

137. X Q. What has been the business of the Bogerts during the time you have been working with them ?

A. Trunks.

138. X Q. Have they had anything to do with traveling-bags ?

A. They buy them already made.

And being further examined by M'r Betts, he says :

139. R. D. You said, in your cross-examination, that the catches you put on the bags in the Warren-street place, and Tenth-street place, were similar, or something similar, to the catch on Exhibit 2, but not exactly like it; what do you mean by that ?

A. I mean that they were put on a little neater; this is a kind of a rough job; we beat them down more—the plate down more.

140. R. D. Is the difference in neatness of the job the only difference between the catches you put on in Warren and Tenth streets and the catch, Exhibit Q ?

A. That is the only difference.

141. R. D. You say, in answer to the 135th cross-question, that you did not know of any manufacturers using catches like that described in the drawing of the patent, Exhibit A, previous to the year 1866—"nothing in that shape"—what do you mean by that ?

A. I mean those prongs coming down on each side, so as to close the bag on each end.

221 142. R. D. Do you mean, that you don't know the names of any manufacturers who did that, or that you never saw any such bags in the market, made by any manufacturers, either American or foreign ?

(Objected to as leading, and as not a completed question on the redirect examination.)

A. I don't know of any manufacturers that made them here, but I have seen foreign bags with those catches on.

143. R. D. Do you know who the defendants in this suit are ?

A. No, sir.

144. R. D. You were asked whether you went with M'r Hill, when he moved from Warren to Tenth street; did you go with him to Tenth street when he first went there; if not, what did you do when he first left Warren street?

A. I went with him; moved up with him to Tenth street.

145. R. D. How, then, did it happen that you worked for William Strong for about three months at the corner of Warren street and Broadway, after M'r Hill had sold out?

A. This was after M'r Hill sold out his Tenth-street shop, and gave up his business up there.

146. R. D. In answer to the 128th cross-question, you were asked whether, about a year ago, when your attention was first called to the matters in this suit, you began to think over whether you had ever made or repaired catches similar to the one on Exhibit 2, and you said, yes; what do you mean by that?

A. M'r Hill called my attention to it, and asked me whether we had done such jobs, and I told him yes.

147. R. D. Did you mean that you then thought of it for the first time, or had you always known of it since you did it?

(Objected to as leading.)

Question withdrawn.

148. R. D. What did you mean by saying you then began to think?

(Objected to as irrelevant, and not pertinent to be put by the defendant on the redirect.)

A. I was spoken to about it, and just refreshed my memory a little to see whether we had not done such jobs as that.

149. R. D. How did you refresh your memory?

A. In various ways; sometimes in bed, sometimes walking, I would get to thinking over it.

150. R. D. Did you remember having put on such catches when M'r Hill first spoke to you about it?

(Objected to on ground that counsel for defendant had exhausted the witness on his direct examination.)

A. I remembered doing that one at the Irving House; I remembered that most particularly.

And being further cross-examined by M'r Marshall, he says:

151. Re-X. In your answer to the 142d question you say, "I don't know of any manufacturers that made them here, but I have seen foreign bags with these catches on;" do you mean that this was previous to 1866?

A. Yes, sir.

152. Re-X. Can you describe exactly those foreign catches?

A. I cannot describe them exactly; they are somewhat similar to what is on Exhibit 3.

And being further examined by M'r Betts, he deposes and says:

153. R. D. When you say they were something similar, do you
222 mean that they differed from these catches on Exhibit 3, as to construction or mode of application? If so, in what respects?

A. They were something similar to those; they were constructed like them, only the handle would not come through the plate.

154. R. D. Through what plate?

A. The plate on the top that covers the catch and holds it on. Exhibit 3 is the only bag made in the way that it is, with the handle through the plate.

And, being further cross-examined by M'r Marshall, he says:

155. R. D. Can you swear to the exact construction of those foreign catches?

A. No, sir; I could not swear to exactly the construction; they might have been made of iron bronzed over, and they might have been brass.

(Last part of answer objected to by complainant's counsel as not responsive.)

156. Re-X. Can you swear that the foreign catches were constructed like the one on Exhibit 2, or as in the letters-patent, Exhibit A, or from your recollection do you think they were the same?

A. They worked on the same principle; the principle was to keep the bag closed, and there is where they were the same.

157. Re-X. Otherwise you can't swear exactly how they worked?

(Objected to, the question seeking to mislead the witness and the court; counsel endeavoring to get the witness to state his want of recollection as to unsubstantial particulars for the purpose of arguing that the catches were substantially different.

Counsel for complainant objects to the objection on the ground that by it defendants' counsel is endeavoring to lead the witness.)

A. No.

And being further examined by M'r Betts, he says:

158. R. D. You say the foreign catches worked on the same principle as those described in the patent, Exhibit A, and that that principle was to keep the bag closed. Please state how they, the foreign catches, kept the bag closed.

A. Just exactly as those on Exhibit 3, and to keep the strain off the lock—that was the principle; the principle was just the same as that, Exhibit 3.

159. R. D. What do you mean when you state that otherwise you can't swear exactly how they worked?

A. I have seen them work from the sides of late years; the ones like that one there, all work on the top.

160. R. D. Question repeated.

A. On foreign bags, all that I have seen, they have all worked like that; that is, the principle is the same, up and down.

161. R. D. I don't yet understand what you meant to be understood as saying, when you said that otherwise you couldn't swear exactly how they worked; what couldn't you swear to?

A. I couldn't swear they were riveted on; some of them might be soldered on.

162. R. D. Did they all of them fasten the jaws by means of two prongs turning down, one on each side of the jaws?

(Objected to as leading.)

A. Yes.

163. R. D. Were any of the catches with the prongs fastened to the jaws of the bag in any other way than by a strap covering the middle part of the catch?

(Objected to as having been put in the question which the witness answered.)

223 A. No, sir; not that I know of; I don't think that style of catch could be put on in any other way.

EDWARD TAYLOR.

Subscribed and sworn to before me this 14th day of January, 1873.

JOSEPH GUTMAN, J'r.,
Examiner, &c.

John Hill, a witness of lawful age, produced on the part of the defendant, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and being examined by M'r Betts, counsel for defendants, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is John Hill; I will be fifty-six years old next month; I reside at 321 West 42d street, New York City; I am a saddle, harness, and trunk maker—that is what I served my time at.

2. Q. Were you ever in the trunk business at the corner of Broadway and Warren street? If so, when first, and for how long?

A. I was; I went there first with a man by the name of Wright; I had charge of the place; at that time I was with him nearly a year, and then he gave it up.

3. Q. Were you ever at the corner of Broadway and Warren street in the trunk business, in business for yourself? If so, for how long?

A. Yes, sir; I went there on the 14th of May, 1849, and remained there until April, 1857, and then I sold out to Strong in 1857 or 1858, I will not be sure which; I can tell by the book.

4. Q. While you had your place at the corner of Broadway and Warren street, did the last witness, Edward Taylor, work for you? If so, in what capacity?

A. Yes, sir; he was an apprentice.

5. Q. Did you ever have an establishment in the trunk business at the corner of Broadway and Tenth street? If so, for how long?

A. Yes, sir; for about three years.

6. Q. From what year to what year?

A. From 1857 to 1860.

7. Q. Did Edward Taylor work for you then also?

A. Yes, sir.

8. Q. After 1860, what did you?

A. I had a little place in Hudson street for a few months, and then left and went to work at military work, in 1861, with Hoover, Calhoun & Co.

9. Q. After you left Hoover, Calhoun & Co., what did you?

A. For two or three months I went to work for Samuel L. Post, my old boss, with whom I had served my time; then I went to work for J. Stillings, on Broadway, between Twenty-seventh and Twenty-eighth street, next door but one to Post's.

10. Q. From what time to what time were you with Mr. Stillings?

A. From December, 1863, until May 1, 1867.

11. Q. Look at the books marked Exhibits 4, 5, and 6, and state what they are.

A. Exhibit 4 is an order-book; Exhibit 5 is a stock-book; Exhibit 6 is a sales-book, of my business.

12. Q. Look at the book now shown you, and state what that is.

A. I kept this book for Mr. Stillings for one year. I kept in
224 it the jobbing and sales of that branch of the business of his place—trunk-making and bags.

(Book offered in evidence, and marked "Exhibit 7, J. G. J.")

13. Q. Now state at what places each of these books were used by you in your business.

A. At the corner of Warren and Broadway and corner of Tenth street and Broadway, books No. 4, 5, and 6 were used by me.

14. Q. Please look at the patent marked "Complainant's Exhibit A,"

and state whether you have ever made, and applied to the frames of traveling-bags, any catches like those shown in that exhibit.

A. I never made or applied anything but what I made myself, before then, like this, like the one I put in this bag, Exhibit 2, except what I term a center catch.

15. Q. When do you remember having made and applied catches like that shown on the bag Exhibit 2?

A. When I was at the corner of Tenth street and Broadway, and when I was with M'r Stillings.

16. Q. Do you remember making and applying any such catches when you were at the corner of Warren street?

A. I would not swear to it.

17. Q. Are you positive that you made and applied to traveling-bags catches like that shown in Exhibit 2, while you were at the corner of Tenth street and Broadway?

A. Yes, sir.

18. Q. How many of such catches were you accustomed to apply to each bag; and where on the frame of the bag did you attach them?

A. That would depend upon the customer. If they wanted one, I would put one on at the center; if they wanted two, I would put on two, one at each end. I would put on just as much as they would pay for.

19. Q. What was the object of such catches?

A. Sometimes to keep the bag together, and sometimes when the lock would give out, instead of straps and buckles across.

20. Q. How were you accustomed to make such catches when at the corner of Broadway and Tenth street?

A. Generally out of a buckle, if I had one that would fit the frame; if not, out of a piece of wire.

21. Q. While at the corner of Broadway and Tenth street were you accustomed to see or have brought to you for repairs any foreign-made bags?

A. Yes, sir.

22. Q. Please describe what kind of catches these foreign-made bags had upon them at that time.

A. They were of brass, of the same principle as that, and worked the same, (indicating the catch on Exhibit 2.)

23. Q. Did these catches on the foreign-made bags differ from each other sometimes in materials and size? If so, in what respect?

A. I don't remember that they did; they were all pretty much alike.

24. Q. Please look at the bag Exhibit 3 and state how the catches on that bag, in their construction, mode of operation, and position on the frame, resemble or differ from the foreign-made bags with the catches you have spoken of?

A. Well, I never saw one like that before, with the handle and catches together; they were always separate, to the best of my knowledge.

25. Q. With the exception of the handle being fastened to the strap which holds the catches to the frame, what other difference is
225 there, if any, between the construction, operation, and location on the frame of these catches on Exhibit 3 from the catches on the foreign-made bags you have referred to?

A. None at all; they worked on the same principle.

26. Q. You said that you put on catches like Exhibit 2 when you were with M'r Stillings. While you were with the Stillings did you there also see foreign-made bags with catches, such as you have testified to?

A. I won't be positive; I might and I might not.

27. Q. Can you tell whether the bag Exhibit 3 is a foreign-made bag or not?

A. No, sir.

28. Q. How did you distinguish foreign-made bags from American-made bags?

A. By the frames and lock; they are generally heavier than the American; and by the general work.

29. Q. Will you look at the bag Exhibit 3 and state whether or not upon its lock there is not stamped the word "Brevet," indicating that it was patented in France?

(Objected to on the ground that the witness is not shown to know the distinction.)

Question withdrawn.

Adjourned to January 15th, 1873, at 10 a. m.

JOSEPH GUTMAN, J'R,
Examiner, etc.

N. Y., *January* 15, 1873—10 a. m.

Present, counsel for the respective parties as before.

Cross-examination of the witness John Hill, by M'r Marshall, counsel, for complainant:

30. X Q. What was M'r Stillings' business, with whom you worked?

A. Saddle and harness maker; he was at No. 1166 Broadway.

31. X Q. When you were in business for yourself did you make traveling-bags and satchels for the trade, and for sale?

A. I did before 1830, for the trade.

32. X Q. Did you after 1830?

A. Not many; I don't think.

33. X Q. Can you swear that you made catches for traveling-bags, and applied them in every respect, like those shown and described in plaintiff's letters-patent, Exhibit A, when at Warren street, or Tenth street and Broadway?

A. No, sir; I made them like that on Exhibit Q.

34. X Q. You are not positive you made any at Warren street at all?

A. No, sir.

35. X Q. You are not positive you saw any while there?

A. I have seen them similar to that, on the same principle, on foreign bags, I think.

36. X Q. But you are not sure—not positive?

A. No.

37. X Q. Who made the catch on the bag Exhibit No. 2?

A. I made it.

38. X Q. When?

A. Yesterday morning.

39. X Q. Can you state that you made catches for traveling-
226 bags precisely the same, and applied them as described in plaintiff's letters-patent, Exhibit A, while at Tenth street and Broadway?

A. No, sir, I never did; I have done the same as No. 2.

40. X Q. How many did you make and apply while at Tenth street and Broadway?

A. I might have made two and I might have made fifty—I could not tell; I might have had them made by the men or boys.

41. X Q. Can you swear they were made and applied precisely the same as shown in Exhibits 1, 2?

A. Yes.

42. X Q. For whom did you make any?

A. I don't know; those that wanted them came in.

43. X Q. Have you seen any that you made since, or after they went from your shop?

A. Not to my knowledge.

44. X Q. Were you not accustomed to use bags with various kinds of catchers and fastenings for holding the jaws of traveling-bags together, and in re*re*lieving the locks?

A. At what time?

45. X Q. Previous to 1866, and while at Warren street, and Tenth street and Broadway?

A. Not so many different kinds before 1866 as lately—of later years.

46. X Q. Then there were some previous to that, of different kinds?

A. Yes, sir.

47. X Q. You have seen such catches as described in the letters-patent Exhibit A, plentifully in market, on traveling-bags, since 1866, have you not?

A. More than I did before; there is more manufacture of bags now than there was then.

48. X Q. Were you accustomed to see and to handle many travelings bags and satchels during the time in which you were in business at the various places you have named?

A. Well, I have handled a great many and made a great many thousands previous to 1850; I made them for the trade before that.

49. X Q. You made many thousands?

A. Yes; I think I have.

50. X Q. And you continued to make traveling-bags until you left business on your own account?

A. A few; I bought a great many from Peddie & Aronisa; Sonnekalb; Sagowitz.

51. X Q. How was your attention called to this suit?

A. A person of the name of Davis, who was in Simon's employ, came to see me, and asked me if I had ever put catches similar to this on traveling-bags.

52. X Q. Did he have a bag along with him when he came?

A. No; he had no bag; he showed me one in the store where I was employed.

53. X Q. Where was that?

A. Ewing & Quinn's, corner of Maiden Lane and William street.

54. X Q. Did you apply catches like this on No. 2 to the bags you sold to the trade?

A. No, sir.

55. X Q. Did you to any that you sold?

A. Not to my knowledge; it was generally to jobbing—repairing.

And being further examined by M'r Betts, he says:

227 56. R. D. You said in your cross-examination that while at Tenth street and Broadway you did not make and apply to traveling-bags catches "in every respect like" those described in the plaintiff's patent, but that you did make and apply them as described in relation to Exhibit 2; please state how the catches in their mode of application to the frame differ, if at all, in the plaintiff's patent, from the catch in Exhibit 2.

A. One is made of a buckle, and the other is made of brass; it is the same principle.

57. R. D. Is there any difference other than mere neatness of construction? If so, what is it?

(Objected to on ground that the witness has been exhausted on that point *or* the direct examination.)

A. On the bag No. 2 is the only way that I ever made them; I might have made them of brass wire, but on the same principle and the same theory.

58. R. D. Question repeated.

(Objected to as before.)

A. Five.

59. R. D. You said on your cross-examination that prior to 1866 there were some different kinds of catches used besides that on Exhibit 2 in the market; please describe any that you remember.

A. There was a catch which they called a center catch, made of iron or steel, that lapped over the bag and covered the frame, and fastened with one rivet.

60. R. D. Anything else that you remember?

A (Objected to as having exhausted the witness.)

A. Yes, I made them with two staples that came through the frame and ran a rod through them.

JOHN HILL.

Subscribed and sworn to before me the 15th day of January, 1873.

JOSEPH GUTMAN, J'R,
Examiner, etc.

Adjourned to January 17, 1871, at 11 a. m.

JOSEPH GUTMAN, J'R,
Examiner.

N. Y., *January* 17, 1873—11 a. m.

Present, counsel as before.

SAMUEL PHILLIPS, a witness of lawful age, produced on the part of the defendants, who was sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, being examined by M'r Betts, says:

1. Q. What is your name, age, residence, and occupation?

A. Samuel Phillips; I am thirty-six years old; reside at 142 Springfield avenue, Newark, N. J.; I am a bag-maker.

2. Q. How long have you been in the country?

A. Five or six weeks.

3. Q. Do you know William Roemer, the plaintiff, who is here present to-day?

A. Yes.

4. Q. How long have you known him?

A. Well, I've known him since 1864 or 1865.

5. Q. Where did you first meet him?

228 A. Wolfski's, Newgate street, London.

6 Q. What was M'r Roemer doing there?

A. Bag-making.

7. Q. What was M'r Wolfski's first name?

A. I think it was Moritz, but I am not certain.

8. Q. What were you doing at Wolfski's?

A. I was preparing bags.

9. Q. How long were you at M'r Wolfski's?

A. About two or three weeks; I don't remember; it was a long time since; I was only there a short time.

10. Q. You said that it was in 1864 or 1865; is that the correct year?

A. Yes, sir.

11. Q. How do you fix the year?

A. What do you mean by fixing the year?

12. Q. How do you know that it was in 1864 or 1865, and not in 1862 or 1863?

(Counsel for complainant objects to the question as leading the witness and suggesting.)

A. Because I worked at Birmingham in 1861, 1862, 1863, and a part; I was out of a situation after 1863, and I worked a few months for myself there; then I couldn't do; so I went over to London.

13. Q. Did you ever know of M'r Roemer working at any other place in London except at Moritz Wolfski's?

A. I am not aware; I don't remember.

14. Q. Who did you work for at Birmingham?

A. John Harrison, 120 Great Charles street, saddle, harness, and bag manufacturers.

15. Q. While you were working for John Harrison at Birmingham, England, during 1861, 1862, and 1863, what kind of fastenings were used for bags?

A. That is the kind of fastening, the same as these, only all brass.

(Witness produces model of the bag-fastening, which is offered in evidence, marked "Defendants' Exhibit 8.")

But in London, between 1864 and 1865, I have riveted bags with French covered frames, of Müller's make, from Paris, the same fastening as those, (pointing to defendants' Exhibit No. 3,) with a ring attached to the side of the plate instead of the top.

(Counsel for complainant objects to the above Exhibit No. 8 as immaterial.)

16. Q. Please state how the bag-catches like Exhibit 8 were attached to the bag-frames at John Harrison's in Birmingham.

A. With a screw at each end through the frame, screwed underneath.

17. Q. How many of such catches were applied to each bag-frame, and to what part of the frames were they attached?

A. Two only; they were attached on the top at each side, next to the handle-ring.

18. Q. Were any locks used on said bags?

A. Yes; one in the center.

19. Q. Do you know who the manufacturers of those catches were which were used on the bags at John Harrison's, Birmingham?

A. One *in* Enoch Holt, 2 Mill street, Willenhall, Staffordshire, England; he is the maker for Harrison and several others. I know some more, but have forgot their names.

20. Q. What kind of catches for bags were used at Wolfski's while you and M'r Roemer worked there?

229 A. Some frames were used of Müller's manufact*ory*, from Paris, with the same catch that I mentioned before.

21. Q. Look at the frame now shown you, and state whether that has the same catches upon it as those used at Wolfski's, while you and Mr. Roemer worked there.

A. The brass one is the same, but the other is not.

22. Q. How were the catches fastened to the frames used at Wolfski's at that time, how many were applied to each frame, and what position on the frame were they placed?

A. They were already fastened, one on each side, each by three pins and a ring next to it; they were placed on the top of the frame, as in this exhibit.

(The frame, referred to by the witness in the last two answers, offered in evidence, and marked "Defendants' Exhibit No. 9."

Complainant's counsel objects to the exhibit, and the questions that have been asked, and the answers given relative to it, as immaterial.)

23. Q. Was there a lock on those frames that were used at Wolfski's at that time?

(Objected to as immaterial.)

A. Yes.

24. Q. What was the position of the lock?

(Objection as before.)

A. It was placed on the tops, in the center of the frame.

25. Q. Did you ever see M'r Roemer while at M'r Wolfski's, working on bags which had such catches on them, applied and situated as you have described?

A. That I can't say, for there was different frames to different bags; I don't believe M'r Roemer has been rivetting bags at all.

26. Q. What did M'r Roemer do at that time?

A. On different things; fitting, and making fancy articles.

27. Q. Who was the foreman of the shop at that time?

A. A man by the name of Walthousen.

28. Q. How many of such bag-frames, with such catches upon them, did you see at Wolfski's, while you and Roemer worked there together?

A. Very few, as they are not practicable.

29. Q. How many do you mean by very few?

A. Just a few odd ones, as we did not care for them; we did not approve of the invention; it was an old thing then; of course we've got something better now.

30. Q. Do you know whether M'r Roemer saw any of those bag-frames, and such catches applied, as you have described, while you and he worked at M'r Wolfski's?

(Objected to as incompetent for the witness to answer.)

A. He could not help seeing them, as he was there.

(Answer objected to as not responsive.)

31. Q. Do you know whether or not catches like Exhibit 8, applied in the manner you have described, were commonly used in England during 1861, 1862, 1863, 1864, and 1865?

A. Yes; on some bags, but not on all bags.

32. Q. Would anybody who was in the bag business in England during those years be likely to have known of such use?

A. Well, those who have been in England during those years were obliged to know.

(Question objected to as immaterial and incompetent.)

230 33. Q. What do you mean by saying that they were "obliged to know?"

A. Because they could not help missing those frames in making bags with those catches, because they were in common use.

34. Q. What do you mean by "could not help missing?"

A. As the frames were given by the employer or foreman, for the workmen to do bags with those frames and catches on them.

35. Q. You say persons in England at that time were obliged to know of those catchers, because they could not help missing those frames in making bags; please explain your meaning.

A. As those frames were in common use.

36. Q. What is your native language?

A. Polish.

37. Q. What do you mean by "couldn't help missing?"

A. I mean couldn't miss but making bags with those frames.

38. Q. Have you met M'r Roemer lately?

A. I have seen him at M'r Poinier's, at Newark.

39. Q. Please state briefly how you happened first to meet him after you came to this country, and what was said between you and he.

A. I came to M'r Poinier's office, and I saw M'r Roemer there. M'r Poinier says to M'r Roemer, "Do you know M'r Phillips?" But I answered "I know that gentleman myself." M'r Roemer asked me who I am? I told him that he did not recognize me, as he said there are so many coming, and so many going, and we spoke together about that catch, as I was not aware that he was the patentee, and I said, "What a foolish thing it is here for people to take patents on old things that Englishmen have done away with;" and M'r Roemer replied, "I am the patentee. I never seen it before, and it is immaterial whether it has been old there as long as it is new here."

40. Q. Did you tell M'r Roemer that you had worked with him at M'r Wolfski's?

A. Yes, sir.

41. Q. And did you tell him that those catches were used there at that time?

A. Never mentioned anything about catch.

42. Q. When did you go to England?

A. In 1854 or 1855.

43. Q. Who did your work for first?

A. A man by the name of Greenbaum; that was several years after I went there. I used to travel, but that was the first place I started to work; it was in 1858 or 1859.

44. Q. Do you remember the time of the breaking out of the war between France and about Italy and Austria?

A. Yes, sir.

45. Q. What year was that?

A. About '58 or '57; I don't exactly remember.

46. Q. Who were you working for then?

A. I was traveling then.

47. Q. Do you remember the date of the war between Prussia and Denmark about Schleswig-Holstein?

(Objected to as immaterial.)

A. About four or five years ago.

48. Q. Did you work with M'r Roemer at M'r Wolfski's before or after that war commenced?

(Objected to as the matter having been gone into, and the witness exhausted on the subject, and the question immaterial.)

231 A. A long time before—three or four years before that.

49. Q. Is your memory for dates good?

(Objected to as immaterial.)

A. No.

Cross-examined by M'r Marshall:

50. X Q. Do you remember what part the year 1864 it was that you first went to Moritz Wolfski's, in London?

A. About September or October.

51. X Q. Then it was near the year 1865, was it?

A. It was near to 1865.

52. X Q. Did you work in Birmingham in any part of 1864?

A. Yes.

53. X Q. You had not finished working for Harrison, at Birmingham, till after the close of 1864, had you?

A. I had finished before 1864, and I worked for myself before I went to London.

54. X Q. Where?

A. At Birmingham.

55. X Q. What part of the year?

A. The commencement of 1864.

56. X Q. What was your business at Moritz Wolfski's while you worked there?

A. Preparing.

57. X Q. What do you mean by preparing?

A. Pasting, binding, and creasing, turning bags, etc.

58. X Q. You said in your direct examination that you did not work for Wolfski but a few weeks; why did you leave there and to what place did you go from there?

A. I found a better situation with a man named Hoffman, of Clerkenwell, London.

59. X Q. What was his other name, business, and place, or street and number?

A. I don't remember his other name; he was a pocket-book maker and bag-maker; I have forgotten the name of the street and the number.

60. X Q. How long did you work for him?

A. Only three or four months.

61. X Q. Where did you go then?

A. To a man by the name of Frankenburg.

62. X Q. Where?

A. Skinner street, Snow Hill, London.

63. X Q. What was his business and other name?

A. Bag-maker; the name of the firm of Frankenburg & Bro.

64. X Q. When did you first see this exhibit marked "No. 9?"

A. Just now; here.

65. X Q. Where did you see first the one marked "No. 8?"

A. I made that myself, according to the pattern I have used since 1861.

66. X Q. I repeat the question—when did you first see the one marked "Exhibit 8?"

A. I made it the night before last.

67. X Q. How came you to make it?

A. For the purpose of giving explanation, as I first used them.

68. X Q. Did you make the iron catch, forming a part of the Exhibit No. 8?

A. No, sir.

69. X Q. Who did.

A. I found it made at Poinier's.

70. X Q. Who made the iron catch?

A. I don't know.

232 71. X Q. Do you know where Mr Poinier got the iron catch, forming a part of Exhibit No. 8, from?

A. I do not.

72. X Q. Then you only made the wooden part of it?

A. I only made the wooden part of it, to show the difference in the plate, as the other part is the same as usual, as I have used since 1861.

73. X Q. How long have you been in the United States ?

A. Six weeks.

74. X Q. Were you ever in the United States before ?

A. No, sir.

75. X Q. You were accustomed to see different catches on bags in England and Europe, were you not ?

A. Yes.

76. X Q. And different ways of fastening and attaching them to bags ?

A. Yes.

77. X Q. Can you describe all the kinds you ever saw ?

A. Yes.

78. X Q. Were you ever engaged in making them, or in making any kind of bag-catches ?

A. No, sir; I made bags, but never made the catches myself.

79. X Q. Can you swear positively that you have seen in England, or in Europe, previous to 1866, catches precisely the same as and attached to bag-frames in precisely the same manner as those shown on Exhibit 9 ?

A. I have seen the same catch with an extra ring attached to it, and they were attached to the frames exactly the same as this. (Referring to Exhibit 9.)

80. X Q. What do you mean by a ring attached to it ; please explain ?

A. For the purpose of attaching a handle ; that plate was longer, and an extra loop to put the ring in for the handle.

81. X Q. Was the loop, to put the ring in for the handle in the ones you saw, just over the catch ?

A. No, sir ; on the inside of towards the lock.

82. X Q. Please state when and where you first saw those you speak of.

A. That I can't say ; I have seen them everywhere.

83. X Q. What do you mean by having seen them everywhere ?

A. I have seen them in the windows, made up, and at the places where I worked.

84. X Q. Did you see them at Moritz Wolfski's, in London ?

A. I can't remember ; I didn't take particular notice, as it was not anything extra.

85. X Q. At what particular place did you see them ?

A. That I can't mention ; it was so many hundred shops.

86. X Q. What do you mean by it was so many hundred shops ?

A. So many hundred shops in England that I can't take out one in particular where I saw it first.

87. X Q. Do you mean that you saw bags having the catches on at so many places ?

A. Not so many places ; at some of these places.

88. X Q. Did you, previous to 1866, see bags having other kinds of fasteners on them not like these shown by Exhibits 8 and 9 ?

A. Yes.

89. X Q. Describe some of them.

A. There was a catch on Steinmetz frame, of Paris, on the front, which fastened on the inside.

233 90. X Q. What Steinmetz ?

A. A manufacturer of frames in Paris.

91. X Q. When did you first see them ?

A. Many years before that ; before 1866.

92. X Q. How many years before 1866 ?

A. Since I came over to England in 1860 ; many years before 1866.

93. X Q. Did you see them previous to 1860?

A. A long time before; I saw them since 1854.

94. X Q. Do you mean by that that you saw them about 1854, 1855, 1856?

A. Yes.

95. X Q. Now, will you give a description of that Steinmetz catch that you saw since 1854, as you have said?

A. There was a loop on each side of the inside of the frame, rivetted to the top, and a kind of a bolt through the front of the other part of the frame, and when the jaws was closed, by pushing down the handle of the bolt, the bag was closed independent of the lock.

96. X Q. How many of these catches, and to what part of the frames were they affixed, on each bag?

A. Two for each bag, one on each side.

97. X Q. Each side of what?

A. The frame.

98. X Q. Do you mean by that, each side of the handle?

A. It is all the same; the handle comes in between.

99. X Q. Were these in pretty general use in 1854, 1855, and 1856?

A. For best bags.

100. X Q. Where were you born?

A. In Poland.

101. X Q. At what place in Poland?

A. A place called Wloclawski.

102. X Q. When did you first go to England from Poland?

A. I left Poland three years previously to going to England, and was in Germany during that time.

103. X Q. And then you went to England?

A. Yes, sir.

104. X Q. About when was this?

A. In 1854.

105. X Q. And you have resided there most of the time since?

A. Yes, all that time till the 1st of December of last year, 1872.

106. X Q. And you have been accustomed to be with the English people and to speak the English language since that time, have you?

A. It took me nearly two years before I could speak English.

107. X Q. Since then you have been accustomed to speak it?

A. Yes, sir.

108. X Q. Have you been accustomed to read and write English, and in the English language?

A. A little.

109. X Q. Since two or three years from the time of your going to England?

A. Yes.

110. X Q. Are you positive that you saw M'r Roemer, the plaintiff, here present, at Moritz Wolfski's, in London, in 1864 or 1865?

A. I am mistaken in the year; it was two or three years previous to that.

111. X Q. What makes you think that you were mistaken?

A. Because I remember that M'r Roemer went away; I kept reckoning the time.

234 112. X Q. When did you keep reckoning the time?

A. Just now.

113. X Q. When you were out at recess to lunch you kept reckoning the time?

A. No, through the conversation of M'r Roemer; he reminded me.

114. X Q. What did he ask you.

A. Whether M'r Wolfski lived there still.

115. X Q. Is that all he asked you?

A. Yes, and the answer I gave was that he lives at S't Paul's; previous to that he had joined partnership with a man by the name of Simpkins, and that was positively at the end of 1863.

116. X Q. Do you know whether there was a patent on these fasteners of Steinmetz you have mentioned, or not, or whether they were marked as patented?

A. They were marked "Brevet, S. D. G."

117. X Q. How long did you work in Birmingham?

A. Three or four years.

118. X Q. What year did you go to Birmingham in?

A. I am confused about the year. It must have been two years previous to 1861?

119. X Q. What did you do before going to Birmingham?

A. I traveled.

120. X Q. Where did you live, or make it your home?

A. Manchester, England.

121. X Q. How long were you at Manchester?

A. About three or four years.

122. X Q. How did the question that M'r Roemer asked you during the recess, relative to the whereabouts of M'r Wolfski, refresh your memory as to the time you saw, as you say, M'r Roemer there?

A. Because I know it is just ten years that they joined partnership, and they could not stop twelve months together, and the business was dissolved, and Simpkins remained at Newgate street, and Wolfski took another place; that is just about nine years ago, and that made my recollection.

123. X Q. What year was it that M'r Wolfski joined partnership with M'r Simpkins?

A. It was in the winter time, between 1863 and 1864; the latter end of 1863, or the early part of 1864.

124. X Q. Are they partners now?

A. How could they be, when they dissolved nine years ago?

125. X Q. Were Wolfski and Simpkins partners in business there when you say you saw M'r Roemer there?

A. No, sir; after that Simpkins was a traveler for Wolfski at the time M'r Roemer was there.

126. X Q. Give the year you came to London and worked for Wolfski.

A. I can't exactly recollect; I know it was before 1863; before they joined partnership.

127. X Q. At what time of the year was it?

A. In autumn; September or October, about.

128. X Q. Did you and M'r Roemer, the plaintiff here, work for Messrs. Wolfski & Simpkins?

A. No, sir; how could it be when he left before they joined partnership.

(Last part of answer objected to, as not responsive, by M'r Marshall.)

129. X Q. Was there anybody with Wolfski as a partner when you worked there?

A. No, sir.

235 130. X Q. On what street and at what number of the street did Mr. Wolfski have his place when you worked there?

A. The name of the street was called Newgate street, on the right-hand side going down to Skinner street.

131. X Q. Are you positive that you ever spoke to Mr. Roemer at Wolfski's place?

A. That I can't tell you; I might have said "Good morning," something like that; we did not work in one department together.

132. X Q. Are you positive that you saw him there at all?

A. More than once; more than a dozen times, I will say.

133. X Q. How many rooms did M'r Wolfski occupy with his business in Newgate street at that time?

A. Four or five, I can't exactly recollect; all small rooms.

134. X Q. Were they connected?

A. There were two or three connected; to the others you had to enter up or down stairs; there was a butcher-shop at the bottom of these premises, a wholesale butcher-shop.

135. X Q. What room did you work in? Describe it.

A. At the very top room; front windows, two windows looking into Newgate street.

136. X Q. How high up was this room, how many stairs?

A. Three stairs up.

137. X Q. Which room did M'r Roemer work in?

A. That I can't tell you; I believe he worked in a back room either right or left; he did not work in a front room.

138. X Q. You say you worked in the very top rooms, with two windows looking into Newgate street; did you work by the windows?

A. No, sir; there were two machines standing there.

139. X Q. What kind of machines?

A. They called them Thomas' machines, with a narrow neck about two inches wide, a brass core.

140. X Q. How long were you in London altogether?

A. Four years and six months.

141. X Q. From what year and to what year?

A. I can't recollect exactly.

And being further examined by M'r Betts, he says:

142. R. D. Look at the 84th cross-question, and state what you meant by your answer to that question.

A. That it wasn't such an extra article to take notice of.

143. R. D. Do you know whether or not you did see any such at Morris Wolfski's?

A. I believe I did see them.

And being further cross-examined by M'r Marshall:

144. R. X. But you are not certain?

A. I am certain I did.

145. Re-X. You can't swear positively that you did?

A. No; I can't swear positively, but I have seen them elsewhere at the same time, which I can swear to.

(Last part of answer objected to as not responsive.)

SAMUEL PHILLIPS.

Subscribed and sworn to before me this 17th day of January, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Examination adjourned to January 18, 1872, at 10.30 a. m.

236 N. Y., *January* 18*th*, 1873—10.30 a. m.

Present, counsel as before.

CARL FREDERICK SPERLING, a witness, of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Betts, says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Carl Frederick Sperling; I am very nearly forty-four years old; I reside in Newark, New Jersey; I am a bag-maker.

2. Q. Where were you born?

A. In Prussia.

3. Q. When did you come to this country?

A. In 1866.

4. Q. What time in 1866?

A. April.

5. Q. Can you give the date?

A. No; it was in the end of April.

6. Q. Did you ever work at bag-making in England?

A. Yes, in London.

7. Q. Whereabouts in London?

A. First I worked in Leman street, for myself, and then I was foreman, in Noble street, for Loebel & Pick.

8. Q. When did you work at bag-making at each of these places? Please give the years.

A. For myself, I worked from August, 1863, to very near the same time, 1864. After that I was with Loebel & Pick to about March, 1866.

9. Q. Were you here yesterday, and did you see the witness Samuel Phillips?

A. Yes, sir.

10. Q. Did you ever know him in London? If so, when?

A. Yes, sir; in 1864.

11. Q. Do you know where he was working at that time?

A. Yes, sir; at Frankenburg's.

12. Q. While you were working for yourself in London, from August, 1863, to 1864, did you ever make any catches for traveling-bags? If so, state how you made them?

(Objected to as immaterial.)

A. Yes, sir; I made them of brass wire.

13. Q. Have you recently made a sample, to show how you made and applied those catches in bags? If so, please produce it.

(Objected to as immaterial.)

A. Yes, sir.

(Witness produces same, which is offered in evidence as defendants' Exhibit 10.)

(Objected to as immaterial.)

14. Q. Were there in use in London, at that time, any traveling-bags with catches for holding the jaws together? If so, please describe the same.

(Complainant's counsel objects to all questions and answers relating to what was seen abroad as immaterial.)

A. Yes; some are made out of wire; some was thicker or thinner; some was made by machinery, and I didn't find out the place where they were made.

15. Q. How did the catches you referred to in your last answer differ,

if at all, in their combination and mode and position of application, from the catch on Exhibit No. 10?

237 A. The only difference was thicker wire; some were made a little smoother and a little rougher; on the English traveling-bags, all on the corner, fastened like mine, I see the plate of some covered with leather.

16. Q. How did it happen that you made these catches for yourself?

A. I have worked for shops in Aldersgate street, and I got to make it to about twenty-five or thirty ready-made traveling-bags there.

17. Q. Do you know whether at that time such catches could have been bought in the market in London ready-made?

A. Yes, sir.

18. Q. Do you know how much they cost at that time?

A. No; I paid for one pair, a shilling.

19. Q. Why did you make them instead of buying them?

A. It was too dear for me—a shilling—I only got a shilling for them.

20. Q. Do you know whether or not the use of such catches was common and general at that time?

A. Yes; I see bags with and without, in the streets and in the windows.

21. Q. Would anybody in the bag business, at that time, have known of those catches?

(Objected to as incompetent and immaterial.)

A. Yes.

22. Q. Have you made and used such catches ever since you have been in this country?

A. I don't make them; but I use them here.

Cross-examined by M'r Marshall:

23. X Q. Where did you come to when you came to the United States?

A. New York.

24. X Q. How long did you live in New York; and when you left New York where did you go, and in what business have you been since you came here?

A. I lived in New York about two weeks; I went to Newark from New York; I have been in the bag business ever since I came here.

25. X Q. Have you been in business for yourself? If so, where and how long?

A. Yes, sir, in Newark; once seven months and once a year.

26. X Q. When, for seven months?

A. In 1868.

27. X Q. And when, a year?

A. From April, 1871, to April, 1872.

28. X Q. For whom did you work when you first came to Newark, and for how long?

A. For Simon Bros., two years.

29. X Q. The defendants here?

A. Yes, sir.

30. X Q. You say you bought catches in London, for which you paid a shilling a piece; how did you fasten them on the bag-frames?

A. On the top.

31. X Q. Were there plates with the catches you bought?

A. Yes, sir.

32. X Q. Were the plates fastened to the catches?

A. No; they were loose.

33. X Q. How did you fasten them to the bag-frames?

A. With rivets.

34. X Q. Who requested you to make the catch on Exhibit 10?

A. Mr. Simon wanted a sample from me.

238 35. X Q. When you were in business for yourself, in Newark, did you use catches like the one on Exhibit 10; and, if so, where did you get them?

A. Yes, they were made by machinery; I got them from Samuel Lagowitz.

36. X Q. How long ago was this?

A. From April, 1871, to April, 1872; I can't tell sure that I used them in that seven months I was in business for myself in 1868; I am sure I used them from 1871 to 1872.

37. X Q. Did you use them when with Simon Bros.?

A. I don't believe it; I aint sure of it; at that time we used other kinds, and Mr. Simon told me it was a patent, and I told Mr. Simon it was a very old thing.

CARL FREDERICK SPERLING.

Sworn to before me, 18th day of January, 1873.

JOSEPH GUTMAN, J'R,
Examiner, etc.

EDWARD SIMON, a witness, of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Betts, says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Edward Simon; I am forty-three years old; I reside at Newark, New Jersey; I am a trunk and bag manufacturer.

2. Q. Are you one of the defendants?

A. Yes, sir.

3. Q. How long have you been in the trunk and traveling-bag business?

A. I believe since 1863 we started in trunks and bags.

4. Q. How long have you been a manufacturer of traveling-bags, either for yourself or for others?

A. Since 1845.

5. Q. Where did you commence in that business?

A. In Germany, Prussia.

6. Q. How long were you in business there?

A. Off and on till 1852.

7. Q. Where did you go then?

A. To the United States.

8. Q. What business did you go into?

A. I worked a short time at harness, saddle-bags, and such things; I worked for T. B. Peddie and Morrison, bag-makers. Then I worked a short time at saddlery business for M'r Benedick and M'r Peters; then I worked for Jacob Lagowitz & Co. After that I started business for myself in 1856, and have been in business for myself ever since. The business I have been in since '56 is sportsman's goods, saddle-bags, military goods, game-bags, sometimes traveling-bags, and a good many articles which is not worth mentioning. I started the trunk business in 1863. Before I started that I made sample trunks and sample carriers.

9. Q. You said that you have been a manufacturer of traveling bags since 1845; in what capacity did you work at that business in Germany, from 1845 to 1852?

A. As a journeyman, as you call it here.

10. Q. Look at the patent of William Roemer, dated July 31st, 1866, (Exhibit A,) and state whether you have ever made and sold 239 catches for traveling-bags, constructed and applied as shown in that patent; if so, when first?

A. Yes; first in 1846.

11. Q. Please state where you were at that time, and how you made such catches?

A. Stolpe, in Prussia; I made them of wire.

12. Q. Describe particularly all that you did in making and applying those catches; what you did to the wire, and how you fastened them to the bags, and in what position.

A. I took a piece of wire, bent it, and shaped it to the top of the frame; took a piece of sheet iron, or brass, put two holes into it, took two rivets, and rivetted to the top of the frame, and sometimes I took a buckle, cut the part off here, took the tongue out, then I had a side catch.

The pieces of buckle referred to by the witness offered in evidence, and marked "Defendants' Exhibit 11."

13. Q. Have you here a sample, showing how you made and applied those catches to traveling-bag frames in 1846?

A. Yes. (Referring to defendants' Exhibit No. 9, and pointing to the iron catch.)

14. Q. Did you apply such catches to traveling-bag frames in the same manner, at any other places besides Stolpe, in Prussia? If so, please name them and the dates when you did so.

A. Yes, sir; Moenster, Cologne, Kreuznach; in Moenster, part in 1847 and part in 1848; in Cologne, 1849 and 1850; in Kreuznach in 1848.

15. Q. State generally how many traveling-bags you have supplied with such catches, in the manner stated?

A. Off and on; we put them on as they are required, as business there is carried on on a small scale.

16. Q. Can you approximate the numbers?

A. Sometimes half a dozen a week, sometimes more, just as the sales were, and the orders.

17. Q. Do you know whether other bag-makers also applied such catches during the same time at those places?

A. Yes, sir.

18. Q. Can you give the names of any such bag-makers?

A. Yes; from '47 to '48, in Moenster; I believe the man's name was Allvendorf. I don't know any other at this time.

19. Q. After you came to the United States, did you ever make and apply such catches to traveling-bags; if so, when and where?

A. I believe in 1858, 1859, occasionally a few in Newark.

20. Q. How did you make such catches at that time?

A. Made them of wire.

21. Q. When did the business of manufacturing traveling-bags in the United States assume any importance?

A. I believe it was in 1864.

22. Q. Prior to that time, to what kind of bags had the American business been confined?

A. Carpet-bags, a cloth bag, what we call an enamel cloth, a few leather bags made of enamel leather, and a few satchels, in comparison with what the business is now.

23. Q. Do you know when the bag which is known as the railroad bag, which opens all the way down to the bottom, came into general use?

A. I couldn't tell exactly whether it was in 1854 or 1855, or even 1853. At that time they called them Pallisier bags.

240 24. Q. Give a general statement of how many of the catches you have described you made and applied, as stated, prior to 1866.

A. I put them on a good many, but I couldn't say exactly the number—how many.

25. Q. Prior to 1866 did you ever see any foreign-made bags with such catches upon them in the United States?

A. I did.

26. Q. How often?

A. Occasionally when I went to Tiffany's, and Schuyler, Hadley & Graham's.

27. Q. In what years did you see such bags with such catches upon them at Tiffany's, and Schuyler, Hadley & Graham's?

A. 1861, 1862, 1863. Those that I have seen there were made of brass and very finely gilded; attached on the top of the frame is a very fine bag.

28. Q. How many of such bags, with such catches upon them, did you see at the places mentioned at those times?

A. I have seen a sample on the sample-table and dozens wrapped up, as I have helped them in Schuyler's to rub up and shape the bags that were bent in importation, and it was my interest to see the new patterns as they came out.

Cross-examined by M'r Marshall:

29. X Q. Did you attach the parts of the buckles you say you applied as stated to traveling-bags to the jaws by the tongue of the buckle or its equivalent?

A. The tongue of the buckle was never left on; it was taken out.

30. X Q. These, you say, were applied by you in Prussia?

A. Yes, sir.

31. X Q. Have you made traveling-bags for the trade previous to 1866 in the United States?

A. Yes, sir.

32. X Q. Did you apply to those bags catches like those described in plaintiff's letters-patent, (Exhibit A,) and in the same manner as therein described?

A. I always was opposed to those catches; never think much of them.

33. X Q. When did you make, or have made, the catches you have exhibited here, marked Nos. 2 and 9?

A. The iron catch on Exhibit No. 9 I made yesterday morning; I know nothing about the catch on Exhibit No. 2.

34. X Q. Where did you begin to make and apply catches like those shown in plaintiff's Exhibit B?

A. I don't know exactly whether 'twas in '67 or '68, but we have used them on the bags, and I was always opposed to them.

35. X Q. You say you have put catches on bags in the United States previous to 1866, by using a piece of buckle, or bent wire; how many such, previous to that time, did you apply?

A. I couldn't state exactly how many, but some.

36. X Q. State what year and where you made and applied any like them?

A. I believe it was 1858 and 1859, in Newark.

37. X Q. For whom?

A. For Slocum and Hopkins; they kept cutlery and sportsman's goods. Through them I sold bags where these catches were attached, mostly to foreign gentlemen who came here for hunting; also, I equipped them with other things.

30. X Q. These bags were sportsman's bags, were they?

A. Traveling-bags and sportsman's bags.

39. X Q. Now describe those bags.

241 A. The bags were made of a russet bag-leather, well stitched together with waxed thread, sometimes with a lining and then without, with an iron frame, one lock, and then I applied two side catches, as they were ordered to be put on. Sometimes we put a strap and a buckle on, in place of the side catch, sometimes a heavy ring riveted to the end, a strap applied to it to be carried over the shoulder; sometimes I made them of oiled breeching-leather, or enameled leather.

40. X Q. These bags were generally to be carried over the shoulders by a strap, were they not, in the form of a sportsman's pouch?

A. No; these were in the shape of a traveling-bag; handle also attached to it.

41. X Q. Were the jaws of those bags made in the same manner as the jaws of Exhibit B and Exhibit 9?

A. When I had orders to apply such side catches as the iron catch on Exhibit 9, I made them myself.

A. I should say the same as Exhibit 9.

42. X Q. Were they made of three pieces, namely, two side pieces, with a top band?

A. Yes, sir.

43. X Q. Did you make those catches you say you put on bags previous to 1866 yourself?

A. When I used this kind of catch, (pointing to iron catch on Exhibit 9,) yes. Frames which we sent in 1863, 1864, 1865, and 1866 always had catches delivered with them, furnished by the parties who made the frames.

44. X Q. And were those catches like the ones on Exhibit 9, and like those described in plaintiff's letters-patent, (Exhibit A,) which you say were furnished with the frames?

A. No.

45. X Q. What kind of catches were they?

A. I now make drawings of said catches, as were then furnished, and I could bring you the originals.

(Defendants' counsel offers drawing in evidence, marked "Exhibit 12.")

46. X Q. Did you make those catches marked "Defendants' Exhibit No. 1?"

A. We bought them at Stevens, Roberts & Havell.

47. X Q. Did you ever make any like or similar to them?

A. No.

48. X Q. When did you use that kind of a catch on bags in your business?

A. In 1868 or 1869, or even in 1870; I can't say exactly, but during this period that they have been used.

49. X Q. Did you use them previous to your using such as those on Exhibits 9 and B in your trade; that is, in manufacturing for the trade?

A. In the first place, you mean putting them on the bag-farmes; in the second place, you mean we use those on Exhibit B, and those marked Exhibit No. 1, at the same period.

50. X Q. When did you begin to manufacture for the trade bags having catches like those on Exhibit B ?

A. During my absence in Europe, in 1870, they applied such side catches to bags, as shown in Exhibit B, with a knob on them.

51. X Q. And what kind of catches did you use for the trade before that time, 1870 ?

A. Well, what do you mean by trade ?

52. X Q. I mean in your business of manufacturing traveling-bags for the trade.

A. We have used catches like those shown in Exhibit 12, (you
242 are speaking of from 1866, I suppose,) and we have used catches
like this, (Exhibit 1;) also, we have used catches we have bought
of Samuel Lagowitz.

EDWARD SIMON.

Adjourned, at request of complainant's counsel, till Monday, January 20th, 1872, at 1 p. m.

NEW YORK, *January 20th*, 1873—1 p. m.

Counsel present.

Cross-examination of Edward Simon continued by M'r Marshall:

53. X Q. Previous to 1866, what kind did you use in manufacturing traveling-bags for the trade ?

A. I have used this, (pointing to iron catch on Exhibit 9,) and from 1863 we have used catches like this, (pointing to a side catch on a frame produced by witness.)

(Frame put in evidence and marked "Defendants' Exhibit No. 13.")

54. X Q. How many catches did you make and apply to traveling-bags like the catch on the frame marked "Exhibit 9" previous to 1866 ?

A. I should say a good many; but the exact number I cannot state.

55. X Q. Where did you procure them ?

A. When I had orders to apply such side catches as the iron catch on Exhibit 9, I made them myself.

56. X Q. How many orders did you have in the United States for applying such catches which you actually filled ?

A. They were very small; at that time I only worked myself at the business; my business was very small.

57. X Q. For whom did you make these, and when, like the iron catch on Exhibit 9 ?

A. In 1858 and 1859, for different parties, and they paid for them right off, except one party, "Hopkins & Slocum," and some third member of the firm, whom I have forgot. There came parties from abroad hunting here, and I supplied them with traveling and hunting materials also. I did put some on for officers in the army with Colonel Mendel's regiment.

58. X Q. In what year was this ?

A. I really can't tell; it was when that regiment left for the war.

59. X Q. Was this a Newark regiment ?

A. Yes, sir.

60. X Q. Were the catches that you made and applied to the bags for those officers you speak of, made and applied precisely like the iron catch in Exhibit 9 ?

A. Not all, as I can recollect. By order of one Captain Brune, who served with me personally in the army in Europe, I put these catches on, (pointing to iron catch before referred to.)

61. X Q. Do you swear that the catches you made and applied to

Captain Brune's bags were precisely like the iron catch on Exhibit 9, and applied precisely in the same way?

A. I made a side catch and put it on a ready-made bag, like this, (pointing to said iron catch on Exhibit 9.)

62. X Q. What kind of a bag was that bag of Captain Brune's?

A. A traveling-bag.

63. X Q. About what size?

A. Between an eighteen and-twenty-two inch bag.

243 64. X Q. Were the catches you say you bought of Samuel Lagowitz for bags like this now shown you? (A catch produced by witness shown him.)

A. Yes; this is the kind of catch we bought of Samuel Lagowitz.

(Complainant's counsel puts same catch in evidence, marked "Plaintiff's Exhibit D.")

65. X Q. Plates came with the catches, did they not?

A. Yes; most of the time.

66. X Q. How early did you buy any such catches from Samuel Lagowitz?

A. I really can't remember, but we had them.

67. X Q. Did you get from him any such catches as Exhibit D previous to or during the year 1866?

A. No.

68. X Q. Did you know that a suit was commenced by plaintiff, W'm Roemer, against Samuel Lagowitz and others, for infringing on the patent on which this suit is brought?

A. I have heard of a suit against M'r Lagowitz, and I have told M'r Lagowitz that I have used a catch made of wire and put them onto bags before 1848.

69. X Q. When did you tell him so?

A. I can't recollect the date; during the period when the Roemer and Lagowitz suit was going on.

70. X Q. Did he not request you to give evidence in that suit for him?

A. No.

71. X Q. Were you not called on to give evidence in that suit in his behalf?

A. To my knowledge, no.

72. X Q. Were not your firm, or some of the members of it, requested to give evidence on his behalf?

A. I don't know about it. I couldn't tell whether they were or not.

73. X Q. Were you not requested to join him in the defence?

A. What do you mean by "join"?

74. X Q. Help him defend the suit.

A. I told Lagowitz that this patent spoken of was an unjust claim, and I personally will pay him part of expenses.

75. X Q. Of defending that suit?

A. Yes.

EDWARD SIMON.

Subscribed and sworn to before me this 20th day of January, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Adjourned to January 21st, 1873, at 11 a. m.

JOSEPH GUTMAN, J'R,
Examiner.

N. Y., *January 21st*, 1873—11 a. m.

Present, counsel as before.

THOMAS WALTER GRIFFITH, a witness of lawful age, produced on the part of the defendants, having been first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by Mr Betts, counsel for defendants, deposes and says as follows:

244 1. Q. What is your name, age, residence, and occupation?

A. My name is Thomas Walter Griffith. I am 44 years old. I reside in the city of Newark, New Jersey. I am in the insurance business.

2. Q. Did you ever have or see any traveling-bag the jaws of which were fastened by catches like that shown you on the frame which is now offered in evidence, marked "Exhibit 40"? If so, please state when and where you have seen such bags with such catches.

(Question and introduction of exhibit objected to as leading.)

A. I have frequently seen such catches, not exactly like this catch in formation. There was not a catch upon them to prevent them turning round; they went all round. I am now speaking of catches which I saw years ago on bags. The first bag I saw was about the year 1854 or 1855, and since frequently on bags of British officers and others who were stationed in Canada. The catch was a little flatter and wider than the specimen exhibited, but the principle appeared to be the same. In the year 1853 I purchased a bag in London, England, which had catches similar to those above described.

3. Q. What did you do with the bag which you purchased in England with such catches upon it?

A. I brought it to Canada with me.

4. Q. Did you ever bring it to the United States? If so, when?

A. Oh, frequently, between the years 1859 and 1867.

5. Q. Did you ever bring it to the United States before the year 1860?

A. My previous answer would reply to the question, I think.

6. Q. How many times did you bring it to the United States before 1860, and to what parts of the United States, and how long did you stay?

A. I could not say how many times, but certainly more than a dozen times. To New York, Boston, Buffalo, Rochester, and I was visiting the United States temporarily, generally staying at the Fifth Avenue Hotel when in New York.

7. Q. Was there any difference in the construction of the catches upon the bag you so brought to the United States from the catch on Exhibit 14, except in the flatness and breadth of the side pieces of the catch, and in the fact that the catches you have mentioned turned all the way round under the plates? If so, state any other differences, if there were any such.

A. No difference that I can see.

8. Q. Do you know whether bags having such catches upon them were or were not common in England at the time you bought yours?

A. I could not say; but, on purchasing the bag, I asked to have the catches put on, which they were.

9. Q. How many catches were there on the bag you purchased? To what part of the frame were they fastened? Did the bag you purchased have any lock?

A. No lock. The frame had a fastening catch independent of those two catches, which was worked by a spring; the catches were on the frame about the two corners.

Cross-examined by M'r Marshall:

10. X Q. Where were you born?

A. In Canada.

11. X Q. At what place?

A. A place called Rawdon.

12. X Q. How long have you resided in the United States?

A. About three years.

245 13. X Q. Please state the places you have resided at during that time, and the business you have been in.

A. New York and Newark, and have been in the insurance business and operator on Wall street.

14. X Q. What do you mean by insurance business?

A. Fire-insurance business.

15. X Q. Are you in that business still?

A. I am.

16. X Q. What company for?

A. Several companies.

17. X Q. Please name them all.

A. I represent the Liverpool, London, and Globe Insurance Company of England; the Lancashire Insurance Company of England; the Pennsylvania, Underwriters', and the American Central.

18. X Q. Were you ever engaged in any mechanical business or employment?

A. Never.

19. X Q. When did you first see the frame, Exhibit 14?

A. In this office, to-day.

20. X Q. You say the first bag you saw having a catch on it was about the year 1854 or 1855. Please state how you know it was in one of those years, and where you saw it.

A. I saw a bag in the possession of a M'r Benedict, chief engineer of a railroad. I know it was one of those years, because it was some time before I visited England. I saw it on board of a steamer, going over to Toronto from Niagara Falls. I would add I was much struck with the utility of it, which impressed it on my mind.

21. X Q. Do you swear positively that that catch you saw was precisely like the one in Exhibit 14, and made and applied in the same manner?

A. I do, with the exception previously explained in my former answer to direct interrogatory No. 2.

22. X Q. How do you know that it was made in the same manner as that on Exhibit 14, with that exception?

A. Having closely examined the first bag I had ever seen, which was about the year before referred to, thinking they would be just what I wanted for my own bag, so as to prevent the sides of it from bulging out, and since on the bag which I purchased in England. Having seen them very frequently, and had occasion to close the catches after the bag was closed with a spring-catch, as the bag remained in my possession eight or ten years, I think it was.

23. X Q. From whom did you purchase that bag in England?

A. I do not remember now; at one of the bag-stores.

24. X Q. How was the catch fastened to the frame on the bag you purchased in England?

A. I really couldn't say whether it was with screws or nails, but with one or the other; that is, the fastening of it on by the sheet, or piece that covered the catch.

25. X Q. Might not the catch and the sheet or plate you speak of for fastening it on have been attached together before they were put upon the bag-frame?

A. They couldn't be, I think, or I would have noticed it.

26. X Q. Might it not have been the case with the one you saw on the boat going to Toronto?

A. I did not examine the fastenings of the catch closely, my mind being more directed to the catches.

246 27. X Q. In what town or city in England did you purchase the bag you mentioned as having purchased in England?

A. London.

28. X Q. In what street?

A. I couldn't say what street, but think it was on Ludgate Hill, or a continuation of it—Cheapside.

29. X Q. What year was this in?

A. 1858.

30. X Q. Was it a shop of considerable importance that you purchased it in?

A. It was a large shop.

31. X Q. A bag shop?

A. They sold bags. If I remember right there was a jeweller's shop mixed up with the same business, and fancy goods.

32. X Q. You have seen various kinds of catches for bags, previous to the year 1866, applied to the jaws of traveling-bags, at or near corners of the frames at each end of the jaws, have you not, for the purpose of holding them together and relieving the lock, other than the one you have described on the bag you purchased in London, and on the bag you saw on the boat going to Toronto?

A. No, I have not. I had a bag that did fasten near the corners of the frame by a lock which shot into it, by turning of the key, but they were inside. With the exceptions of leather fastenings by buckle and strap, I have not seen any that I now recollect.

T. W. GRIFFITH.

Subscribed and sworn to before me this 21st day of January, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Adjourned to Saturday, January 25th, at 11 a. m.

WHITNEY & BETTS, *Def'ts' Solr's.*
JONATHAN MARSHALL, *of Counsel for Pl'ff.*

N. Y., *January* 25, 1873—11 a. m.

Present, counsel as before.

Isaac Poinier, a witness, of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Betts, of counsel for defendants, the witness says:

1. Q. What is your name, age, residence, and occupation?

A. My name is Isaac Poinier; I am thirty-four years of age; my residence is No. 298 Washington street, Washington, New Jersey, and my business is that of salesman.

(Counsel for complainant objects to examination of witness, on the ground that no notice has been given of intention to produce such witness.)

2. Q. Were you ever in the employ of William Roemer, the complainant, who is here present to-day?

A. I was.

3. Q. From what time till what time?

A. From October, 1867, till November, 1871; the last year there was a partnership—Roemer & Poinier.

247 4. Q. Did you ever see any printed publication containing any description or drawing of any catch for traveling-bags, claimed to be patented by William Roemer, in the patent, Exhibit A, now shown you?

A. I have.

5. Q. Please state what that printed publication was.

A. It was a price-list or catalogue of Fisher's, of London, containing cuts of the catch, as they were in the bag.

6. Q. Did that catalogue have cuts in it of other bags and other fastenings, besides that to which you refer?

A. It had other bags, but whether it had other fastenings I dont remember.

7. Q. Please state when and where you saw that catalogue first.

A. In the summer of 1868, at the store of Dempsey & Dowding, on the corner of Sixth avenue and Amity street, New York.

8. Q. At the time you first saw that catalogue, did you learn when the same was issued or published? If so, how did you learn it?

A. Not the year, positive, but from the conversation of M'r Dowding, who stated that he had it about two years.

9. Q. Did said catalogue, at the time you first saw it, have any date of publication upon it? If so, what?

A. I think it did; 1865, I think, was the date.

10. Q. Will you please state how your attention happened to be called to that catalogue, and how it happened that you observed the cut of the bag with the Roemer catch on it?

A. From M'r Dowding's showing me the book to compare the prices of English-made bags as compared with those of domestic manufacture. I observed the cut from his drawing my attention to it as being the same that M'r Roemer had claimed the patent for.

11. Q. Please describe fully the cut which showed the Roemer catch?

A. The cut of the bag was a front view of the bag; the mouth or frame was standing open, one catch turned up, giving a portion of the inside view of the bag.

12. Q. Was more than one catch represented and shown in the cut?

A. There was two.

13. Q. Where were they situated?

A. On the top of the frame at each end, a little over midway between the back and the end of the frame.

14. Q. After the summer of 1868, did you ever see that catalogue again? And if so, when?

A. I did; in the fore part of December, 1871.

15. Q. When you saw it in December, 1871, did it have the cut still in it that you have described, which showed the Roemer catches?

A. It did not.

16. Q. How was the cut removed?

A. Of that I have no knowledge.

17. Q. Were any of the leaves torn out in December, 1871, which had been in the catalogue in the summer of 1868?

A. They were.

18. Q. Was the bag which had the cut upon it showing the Roemer catches missing ?

A. It was.

19. Q. Had you, between the summer of 1868, when you first saw the book, and the time when you saw it again in 1871, told M'r Roemer about the cut in the book showing his catch, and about the date of the publication ?

248 A. I did.

20. Q. Please state what the conversation between you and M'r Roemer was when you told him about the book and the date of its publication.

A. I drew his attention to the fact of my having seen the publication, and of its being the same thing as his patent catch, suggesting its making his patent null and void, as being of prior origin.

21. Q. What did he say ?

A. He said that didn't amount to anything.

22. Q. Had you, before you saw that book, ever talked with him about such catches as he had patented having been used in England ?

A. I had.

23. Q. Please state what had been said on that subject.

A. The conversations between us on that were in regard to other parties who were using, or about using, the catch, claiming its having been of English origin or invention.

24. Q. What did M'r Roemer say to that ?

A. He denied ever having seen any while he was there.

25. Q. Have you any information whatever as to how the cut, in the catalogue you have referred to, became destroyed ?

A. I have not.

26. Q. In December, 1871, when you saw the book, did you have it in your possession ?

A. I had it in my possession two days.

27. Q. Did you show it to M'r Roemer during that time ?

A. I did not.

28. Q. Do you know of anybody who did ?

A. I do not.

29. Q. Do you know of a lock for a traveling-bag patented by said William Roemer December 28, 1869 ?

(Objected to as irrelevant.)

A. I do.

30. Q. Is the bag now shown you (which is offered in evidence, marked Defendants' Exhibit 15, J. G. J.) provided with such lock?

A. It is.

31. Q. Do you remember the fact of M'r Roemer making an application for a patent for that lock in Exhibit 15 ?

(Objected to as irrelevant.)

A. I do.

32. Q. Prior to the time of his making an application for that patent, did any foreign-made bag come to his place of business, having upon it the same kind of lock as on Exhibit 15 ?

(Objected to as irrelevant, and counsel for plaintiff requires counsel for defendants to state his reasons for going into the examination of witness in respect to a matter not in controversy.)

A. I believe there was.

33. Q. Please state all the circumstances in regard to that foreign-made bag coming to M'r Roemer's place of business; what sort of a bag

it was; how long it remained there; whether anything special occurred in relation to it.

A. I should judge it was a Vienna-made bag, with a lock upon it, working upon the same principle as that on Exhibit 15; it came there for repairs, and my attention was called to the bag from the fact of the numerous inquiries made for it by the parties from whom we got it. It
remained there, I should judge, some two or three months. I
249 was not aware of the style of bag, or the style of lock upon it,
during the time these inquiries were made for it, until it was found
after the application for a patent for the lock upon Exhibit 15.

34. Q. You say it remained there some two or three months, and that it was found after the application for a patent for the lock on Exhibit 15. How did it happen that it remained there so long?

A. I do not know; we had looked for it but it could not be found; do not know why it could not be found.

35. Q. Had you, prior to its being found, told M'r Roemer about the inquiries that were made for it?

A. I had.

36. Q. What did the persons say who sent the bag to you about its loss?

A. That we should have to pay for the bag or fu'nish a new one, unless it was produced.

37. Q. State the circumstances under which the bag was found.

A. On a certain day, on going in the factory in the morning, at the bench where I was employed there was no bag of that character, neither on the bench or sample-case, but immediately after M'r Roemer's coming into the factory from his house, I saw, sitting upon the sample-case, this bag that had been lost.

38. Q. When did the reappearance of this bag occur, as compared with the time of Roemer's application for a patent for the lock, and the time when the patent was granted?

A. I should say between them.

39. Q. Please describe the principle of this lock which was upon the Vienna-made bag which came to Roemer's place before his application for a lock-patent, and then disappeared, and reappeared after the application was made.

A. The lock was fastened upon the front of the frame with a hasp or catch upon the top, working upon a hinge falling into the lock, removing the strain from the inside of the lock.

40. Q. So you know from M'r Roemer's habits whether or not he would have been likely to have seen such a catch as he has patented, if such a catch had been in use in London in the bag business at the time he was in the business there? State what his habits, as to looking at what is being done in the trade, are.

(Objected to as irrelevant and incompetent.)

A. I should certainly think he would have seen it. He has a habit of being very watchful, and of looking at everything new or foreign in his own line of trade.

And being cross-examined by M'r Marshall, counsel for plaintiff, the witness says:

41. X Q. You think, then, that he would at once adopt into use any new improvement in bag catches and locks he should discover, either of foreign or domestic manufacture, do you?

A. General improvements in bags, I should think, he would at once adopt; general improvements in bags he would readily adopt.

42. X Q. How long have you been in the bag business, and from what time?

A. Five years last October—since October, 1867.

43. X Q. Where are you employed now, and how long have you been employed there?

A. With H. W. Poinier; since October 1, 1871.

44. X Q. You say the last year of your employment by plaintiff it was a partnership, Roemer & Poinier. Were you a member of that partnership?

250 A. I was not a member of that firm.

45. X Q. You are sure of the date in the catalogue, you say you saw at Dempsey & Dowding's, in 1868?

A. I am not.

46. X Q. Are you positive it was in 1868 that you first saw it?

A. As positive as I can be of anything that I haven't a date set down.

47. X Q. You made no memorandum of the time, did you?

A. I did not.

48. X Q. When was your attention next called to it, and by whom?

A. In the first part of December, 1871; I went there to get the book.

49. X Q. What did you want to get the catalogue for?

A. For the purpose of looking at an English Pellissier bag, of peculiar make, a cut of which I believed to be in that catalogue.

50. X Q. Who sent you for the book or catalogue?

A. No one; I went of my own accord.

51. X Q. What did you do with the book or catalogue after you got it from them—Dempsey & Dowding?

A. I sent it back to them after retaining it for about three or four days.

52. X Q. Was it in your possession during all this time—between your getting it and returning the same to Dempsey & Dowding?

A. It was, with possibly the exception of an hour or two, when it may have been in the possession of H. W. Poinier.

53. X Q. Did you not hand it to some other parties during that time?

A. Not unless it might have been James A. Dunlevy, of which I do not remember having done so.

54. X Q. What did you show it to him for?

A. For the same purpose that I obtained the book for myself.

55. X Q. Did you not get that catalogue or book on the request of Edward Simon & Brothers, the defendants in this suit, or some of them?

A. I did not.

56. X Q. Did you not show the book or catalogue to them, or some of them, at that time?

A. I did not.

57. X Q. Did they not know that you had it?

A. Not during the time it was in my possession, that I am aware of.

58. X Q. Do you mean to say that neither of the defendants in this suit did *not* see it at that time?

A. I do.

59. X Q. Had you not some conversation with them, or some of them, about it at that time?

A. I did.

60. X Q. What was that conversation, and with whom?.

A. That conversation was in regard to M'r Roemer's having instituted proceedings against them for using his patent catch, and was had with William Simon.

61. X Q. Was this the first conversation you had with him or either of the defendants about this catalogue?

A. I don't understand that question as being governed by the preceding question. My answer to the previous question was in regard to the catch, not the catalogue.

62. X Q. Did you not have conversation with them, or either of them, with reference to the catalogue at the time you say it was in your possession for three or four days?

251 A. I did not; but previous, when I stated to William Simon that I had been trying for two or three days to get to Dempsey & Dowding's for the purpose of obtaining this catalogue to see this English Pellissier bag, and up to that time had been unable to get them. I then mentioned the fact to him of the evidence of this catalogue, and of its having in it a cut of a catch similar to the one patented by Mr. Roemer.

63. X Q. How long previous to this three or four days was this conversation you speak of in your last answer?

A. Probably two or three days.

64. X Q. And that was the first you had ever talked with them, or any of them—the defendants—with reference to the catalogue, was it?

A. It was.

65. X Q. Do you know that the catalogue you say you borrowed from Dempsey & Dowding, in 1871, was the same you saw in 1868?

A. I do not, positively; but it is of the same kind and character, representing the same style of bags, and, I think, of the same date.

66. X Q. Where were you working at that time you borrowed this catalogue from Dempsey & Dowding?

A. I was in the employ of H. W. Poinier.

67. X Q. Where?

A. I was employed by him in the city of Newark; but at the time that I borrowed this book I was engaged in assisting him in the store in New York, or a portion of the time.

68. X Q. What was H. W. Poinier's business in Newark at that time?

A. He was not in business at that time, but about going into business.

69. X Q. What business was he going into?

A. Bag business.

70. X Q. You say you saw a bag resembling one of Vienna manufacture, having on it a lock similar to the one marked "Exhibit 15," which was brought to M'r Roemer's establishment for repairing; who brought that bag there, and to whom did it belong?

A. I did not see a bag of that description; by whom it was brought or sent I do not know, or by whom it was received, or to whom it belonged.

71. X Q. What place did you see it at? Name the city, street, and number.

A. I saw it at the factory of William Roemer—244½ Market street, corner of Mulber'y, Newark, New Jersey.

72. X Q. Did you see the person who brought it there?

A. I did not.

73. X Q. Who was the person you say inquired for it?

A. I don't remember.

74. X Q. Did you see and hear a person inquiring for it?

A. I remember of inquiries being made for a lost bag that had come there for repairs.

75. X Q. Who made these inquiries?

A. I don't remember.

76. X Q. Were not other bags, that were brought there for repairs

sometimes mislaid or forgotten for a time, by some of the workmen charged with the matter?

A. They were, and from that very fact is the reason of my not being able to remember the persons making inquiries for this particular bag.

77. X Q. You do not remember the exact time of this particular bag's being left, do you?

A. Not exactly.

78. X Q. Were you ever engaged in making locks or catches for bags?

252 A. I was not.

And being re-examined by M'r Betts, of counsel for defendants, the witness says:

79. R. D. About a year ago, did M'r Roemer come to you, and get an affidavit from you in regard to this catalogue you have mentioned?

A. He did, about nine months ago, I think; in that neighborhood.

80. R. D. Was H. W. Poinier a partner of Roemer?

A. He was.

And being recross-examined by M'r Marshall, the witness says:

81. Re-X. How long was H. W. Poinier a partner of William Roemer?

A. About one year.

ISAAC POINIER.

Sworn to before me, this 26th day of January, 1873.

JOSEPH GUTMAN, J'R,
Examiner, &c.

WILLIAM SIMON, a witness, of lawful age, produced on the part of the defendants, having been by me first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by M'r Betts, of counsel for defendants, the witness says:

1. Q. What is your name, age, residence, and occupation?

A. My name is William Simon. I am forty-one years of age; reside at 18 Centre street, Newark, New Jersey; and am a trunk and traveling bag manufacturer.

2. Q. Are you one of the defendants?

A. I am.

3. Q. Did William Roemer, the complainant, ever state to you anything in relation to any catches for traveling-bags that he had seen or worked on in England? If so, state when and where, and what was said by both parties.

A. In going home from Trenton, after the hearing of our case, I pulled out an imported side catch, and asked Mr. Roemer if he could conscientiously say he had ever seen or worked such side-catches before; Mr. Roemer said, "Yes, and you can work them also."

4. Q. What kind of side-catch was it that you pulled out?

A. Something similar as that, (witness holding up a side-catch,) only not so heavy: the plate was separated from the side-catch.

(Catch put in evidence, and marked "Defendants' Exhibit 16, J. G., j'r.")

5. Q. Did he say where he had worked on them?

A. Yes, sir; in London.

6. Q. When?

A. That I could not tell; of course, before he came to this country.

7. Q. Did he give any reasons why he said that you could work them also?

A. Yes, sir.

8. Q. What?

A. He said they were hand-made; they were dearer than you could make.

9. Dearer than what?

A. Than the work he manufactured here.

10. Q. When was this conversation?

A. I forget the date; it was when the first hearing for motion for injunction was had in this case.

253 11. Q. Did you ever see in this country any traveling-bags provided with side-catches like these described and claimed in the patent of William Roemer, Exhibit A, now shown you? If so, please state at what place or places, and when you saw them first at each place mentioned, and describe the bags and catches you saw.

A. I have seen one in the window at Mr. Tiffany's with a similar catch as this here. (Frame and catches referred to put in evidence, and marked "Defendants' Exhibit 17, J. G., j'r.") The ring was in a knob, riveted through. I mean to say, that the ring was separate from this, (referring to the loop over the side-catch.) Then I have seen several traveling-bags at Wood Gibson's with a heavier side catch; with a spring or catch in the loop, that when touch a certain spring, it opens and stays open; when you put it down it snatches again, and stays down in its position; it was a fine-worked side-catch. At Tiffany's, I saw them first either in 1863 or 1864; at Wood Gibson's in 1865.

12. Q. You say that you saw at Tiffany's a similar "catch;" describe accurately the catches you saw at Tiffany's, and state how they were fastened to the bag.

(Objected to as having been asked and answered in a previous question.)

A. The catch was a little neater and heavier than this, defendants' Exhibit 17, and was fastened by a loop of metal riveted through the top of the frame.

13. Q. Did it differ in construction at all from the catches in Exhibit 17, except in neatness and heaviness?

A. No, it didn't differ, only that it was a little neater and heavier.

14. Q. How many catches were on that bag at Tiffany's, and on what part of the frame were they fastened?

A. Two on the bag; they were fastened near the corner, something like this, (defendant's Exhibit 17.)

15. Q. Now, in regard to the bags at Wood Gibson's, describe accurately those catches—how many there were on each bag and where they were fastened.

A. There were two on a bag, and each was fastened near the corner; they were made in the same manner, only they were neat, heavy, and square; not so round, and worked very handsomely; that is all the description I can give.

16. Q. Made in the same manner as what?

A. As all other catches for that purpose, to hold a bag together.

17. Q. Do you mean that these catches at Tiffany's were like all other different kinds of catches, or what do you mean?

A. Of course I mean that they were made like all other kind of catches for that purpose, to keep the bag together.

18. Q. How do you know what year it was that you saw these catches at Tiffany's and at Wood Gibson's ?

A. Because I had business at both places, with both houses, at or about that time; I can't tell exactly the date; their books will show it, and so will my books.

19. Q. Can you examine your books and find out ?

A. Yes, sir; I can.

Adjourned until January 29, 1873, at 11 a. m.

254 NEW YORK, *January 29th*, 1873—11 a. m.

Present, counsel for the respective parties, as before. Examination adjourned at request of defendants to 2 p. m. same day.

N. Y., *January 29th*, 1873—2 p. m.

Present, counsel, as before.

JOSEPH R. DAVES, a witness, of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, on the matters in controversy herein, and being examined by M'r Betts, counsel for defendants, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation ?

A. My name is Joseph R. Daves. I am fifty-five years of age. I reside in the city of New York. I am at the present time in the N. Y. custom-house.

2. Q. What was your business from 1842 down to 1858 ?

A. Trunk and bag making.

3. Q. Where, and with whom ?

A. I worked in Boston, Philadelphia, and New York during that time. I worked in Boston for Atkins A. Clark, Henry A. Winshef, William Bell, and one other person for about a month, whose name I don't remember. In Philadelphia I worked for a man by the name of Alexander Hickey. In New York for the New York Trunk Manufacturing Company.

4. Q. During what time did you work for Atkins A. Clark ?

A. I was to work for him in the fall of 1842, and worked for him nearly five years at that time. I afterwards worked for him again seven years. I ceased working for him in 1858.

5. Q. Did you, while working for Atkins A. Clark, do any repairing of bags, or putting fastenings upon bags ?

I made a fastening to a bag. It was put on a bag. I did not put it on.

6. Q. Have you here a drawing of that fastening-string, the way in which it was put on that bag ?

A. Yes, sir; I produce it. That is as near a drawing as I can make of it. It was more of stout brass than wire.

(Sketch marked in evidence, marked "Defendants' Exhibit No. 18.")

(Objected to by M'r Marshall.)

7. Q. Narrate the circumstances under which that bag was brought to you, and how you came to make the catch, and how it was made.

A. At that time a gentleman by the name of Getchill worked for Atkins A. Clark, and did the repairing. There was a bag came there to be repaired that had been forced open. It came from a hotel. Getchill fixed the lock; but on the top of the frame, on the end on one side, was a catch. One catch was on, and one has been lost off, but the fastening on one side was still on. In endeavoring to bend this wire to make the catch similar to the other, Getchill broke the wire, as the wire was not annealed, and he did not understand it, I presume. I had worked some sixteen months in the jewelry business, and understand the annealing of wire, and I took the wire and annealed it in the store, (this was in the winter,) and bent it over a board-iron just the size of the frame in width. I then gathered the end of the wire to correspond with the other catch. In flattering that wire I split it. The catch on the bag, the flat portion of it, looked as though it were enchased somewhat, and I undertook to show him how to do it. I took the small coal-punch to show him how the figuring work was done on the other catch, and endeavored to figure this catch in the same way, and broke it off where I had fastened it. I only broke one side off—the side which I endeavored to make similar to the other catch. I then made another catch similar to that, and flattened it to the best of my ability, and Getchill put it on the bag.

8. Q. Was the bag sent back to the customer with two catches on it, as shown in the drawing you have produced?

A. To the best of my knowledge it must have been. It went down into the store. This was in the workshop.

9. Q. In what year was it that you made this catch, and it was applied as stated?

A. In 1842 or 1843.

And being cross-examined by M'r Marshall, he says:

10. X Q. Where did you reside at the time of making this catch?

A. In Boston.

11. X Q. Please state the street and number.

A. I boarded for a long while at No. 12 Brattle street; how long I can't really tell. I boarded at the Pemberton House, and at the Carlton House, and for three years and a half I resided at the Hanover House. I think that comprises about five years of my first residence in Boston.

12. X Q. At the time you say you made this catch, where was the shop of Atkins A. Clark?

A. On the corner of Elm street and Brattle Square.

13. X Q. How long did you work there?

A. The first time I worked there for five years, I think. Afterwards I went back and worked for him for seven years more. Twelve years in all, I think.

14. X Q. To whom did the bag belong for which you made the catch?

A. I don't know. How do I know? How should I know? Being a journeyman in the establishment, I had no knowledge of who sent in jobs to be repaired.

15. X Q. This was the only job of the kind that came under your knowledge, was it?

A. Yes.

16. X Q. Do you know what M'r Getchell's name was?

A. No; I don't know that I ever heard his given name.

17. X Q. How long have you known the defendants in this suit, or any of them?

A. Having been in the same business for the last thirty-nine years I may have heard of them six years ago. My personal knowledge of the firm was some four years ago; that is, my intimacy, I mean. Any intimacy that I had was about four years.

18. X Q. When was your attention first called to the matter of this suit?

A. If you can tell me the date when the suit was brought in Trenton, I can tell you within a month. It was within a month from the time the suit was brought in Trenton.

19. X Q. How was your attention called to this matter?

A. I heard that M'r Simon had to go to Trenton to defend this suit in regard to the catch.

20. X Q. Did they wish you as a witness?

A. They asked my opinion at the time, if I knew anything about it. I evaded at that time all answers in regard to it, not wishing to have anything at all to do with it, and was only until a party had given his evidence, and told M'r Roemer himself that he would not have given his evidence had it not been from friendship to me, that I said anything in regard to the matter which I was acquainted with.

256 21. X Q. Who was this party you refer to as telling M'r Roemer himself, as stated in the last answer?

A. That was M'r John Hill. I met him on Eighth avenue. I asked him why he had told M'r Roemer that it was only through his friendship to me that he had given his evidence, and had made the catch in my presence, and had put it on to the frame, as he had no friendship for the other parties; whereas I knew that William Simon had been to see him several days previous, and during our conversation I narrated to him all I knew of the catch; in that way I was subpœnaed, to the best of my knowledge; so far as the placing of the buckle on the frame, that he did in my presence. I saw the same thing done in the fall of 1837, in Hollidaysburgh, Pennsylvania—that is the buckle portion.

22. X Q. Did you hear M'r Hill tell M'r Roemer himself?

A. Tell what?

23. X Q. You say, in answer to question 20, "it was only until a party had given his evidence and told M'r Roemer himself that he would not have given his evidence had it not been from friendship to me, that I said anything in regard to this case;" did you hear him tell M'r Roemer?

A. No, sir, I did not hear him tell M'r Roemer; I got it from another party in the store where the discussion took place. I met him on the following evening, when the discussion between M'r Hill and myself took place.

24. X Q. Did you see the bag after the catch you say you made in Boston, after the catch you made had been applied to the bag?

A. I don't understand the question; do you mean any time after? I must have seen it afterwards, because I saw the bag that was finished. I don't know what you mean. I saw the catch after it was finished—I can't say how many months after. Usually after the repairs are done the article is sent into the store, and from there delivered to the owner. What called my attention to the bag was the inside formation of the bag: on one side was a square partition, on the opposite side was two loops for a tooth-brush or something similar; but what the square partition was intended for we could not tell, and it was several years after, when I had been in a retail store, where we sold what we called furnished bags, that I ever formed any idea what the square partition was intended for.

25. X Q. Then you never saw that bag after it went out of the shop?

A. Not to my knowledge.

26. X Q. Where are you employed now?

A. In the custom-house.

27. X Q. Have you ever been in the employ of Edward Simon & Brothers, the defendants in the suit? If so, state when, how long, and from that time to what time, and where.

A. I have been in the employment; I entered their employment October 4, 1869, and left their employment, to the best of my knowledge, on the 26th of September, 1872, and was in their employ in the city of New York. I was salesman and traveling agent.

28. X Q. When did you make this drawing, Exhibit 18?

A. To-day.

29. X Q. Where did you make it?

A. In this office. I was asked the question whether I could draw something similar to what I had made, and I drew, to the best of my knowledge, a fac-simile of the catch.

30. X Q. Can you swear that this catch in the drawing is an exact fac-simile of the catch you say you made in Boston?

257 A. I have already sworn to that fact.

And by further examination by Betts, he says:

31. R. D. In answer to your 21st question, you say that M'r Hill placed a buckle on a frame for a catch in your presence; when was that and where?

(Objected to a' leading.)

A. The exact date I cannot tell, but it was done in the workshop of Ewing & Quinn, corner of Maiden Lane and William street; some time last spring, a very short time previous to his giving the first evidence he gave.

JOS. R. DAVIS.

Subscribed and sworn to before me, this 29th day,

JOSEPH GUTMAN, J'R,
Examiner.

OSCAR DITZES, a witness, of lawful age, produced on the part of the defendants, having been by me first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth in the matter of controversy herein, and being examined by M'r Betts, counsel for the defendants, deposes and says, as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Oscar Ditzes; I am thirty-four years old; I reside in Philadelphia, Pa.: I am a saddler.

2. Q. Have you been served with a subpœna in Philadelphia yesterday, to attend here to-day?

A. Yes, sir.

3. Q. Do you know William Roemer, the plaintiff, who is here to-day?

A. Yes, sir.

4. Q. Where did you first meet him?

A. In London.

5. Q. At what time?

A. In 1862.

6. Q. Were you working in London at that time; if so, at what business?

A. Yes, sir; at satchel-making.

7. Q. How long did you carry on that business in London?

A. About nineteen months.

8. Q. From what time to what time?

A. From October, 1861, to March, 1863.

9. Q. Whom did you work with?

A. Vogel Brothers and E E. Smith, of Queen street.

10. Q. Where was M'r Roemer working at the time?

A. We worked together at Vogel Brothers; I don't know what M'r Roemer did afterwards.

11. Q. How long did you work with M'r Roemer at Vogel Brothers?

A. Two or three months.

12. Q. While you were in the satchel business in London, from 1861 to 1863, did you ever work on bags having catches applied to them, like those described in the patent of William Roemer, dated July 31, 1866, Exhibit A, in this case?

(Letters-patent shown to the witness.)

A. Not in London.

13. Q. Did you ever work on any bags with such catches elsewhere than in London?

A. Yes, sir.

258 14. Q. When first?

A. In 1863.

15. Q. Where?

A. In Cologne.

16. Q. While you were in London did you ever see any such catches on bags?

A. Yes, sir.

17. Q. Where?

A. At Keller & Bertram's, 28 Remsen street, near Oxford street.

18. Q. When was that past?

A. From 1861 to 1863, during the time I was in London.

19. Q. Can you name anybody else in London who used such catches on bags at *at* that time?

A. I think Schaffer Brothers.

20. Q. Do you know whether Moritz Wolfski, of London, used such catches during that time?

A. No, sir.

21. Q. Do you know who was the manufacturer of those catches?

A. I don't know the name of the owner; it was a German.

22. Q. Where was his place of business?

A. I don't know.

23. Q. Did you see such catches on bags often during that period from 1861 to 1863?

A. I saw many of them.

24. Q. Do you know whether or not M'r Roemer saw those catches in London?

A. No, sir.

25. Q. Have you got here any drawing showing exactly how those catches which you saw in London from 1861 to 1863 were made?

A. Yes, sir.

26. Q. Please produce.

(Witness produces drawings which is marked "Defendants' Exhibit 19," and offered in evidence.)

27. Q. That drawing is upon a letter; who was that letter written by, where from, and whom to?

A. It is from a friend of mine, an architect, Mr. Benniker, from Cologne, and written to me.

28. Q. Do you know who made the drawing, Exhibit 19?

A. He, M'r Benneker.

29. Q. Did you know what kind of catches for bags Moritz Wolfski, of London, did use between 1861 and 1863?

A. No, sir.

And being cross-examined by M'r Marshall, he says:

30. X Q. How long have you been in the United States, and when did you first come?

A. I came in April, 1869, and have been here ever since.

31. X Q. Did you ever work at making bag-catches?

A. No, sir.

32. X Q. The kind you used and saw are represented by the drawing on the letter produced by you, marked "Exhibit 19," were they?

A. Yes.

33. X Q. Underneath is a description of the catch, is there?

A. Yes, sir.

34. X Q. When was that drawing, Exhibit 19, made, and at whose request was it made?

A. It was made on the 5th of May, 1872, at my request.

259 34. X Q. Why did you request him to make it?

A. Because I used this kind of catch myself.

35. X Q. Did you get it at the request of any one else?

A. No, sir.

36. X Q. Did not some one request you to send for that, or for information on the subject?

A. No.

37. X Q. Now, why did you want to get that drawing and description?

A. I wanted to see if it was just the same, as I had the idea that it was, as I used it myself.

38. X Q. How long have you known the defendants, Edward Simon & Brothers?

A. I only know the *name*; I saw him once in Philadelphia, about eight days ago—one brother—the other brother about six or seven months ago.

39. X Q. When did you first hear of this suit?

A. About two years ago, or two years and a half.

40. X Q. You mean that you heard that some suit was going on in this matter, about two years or two and a half years ago?

A. Yes; M'r Roemer told me so.

41. X Q. Which of the M'r Simons' Brothers was it that you saw six or seven months ago?

A. I don't know them apart; I don't know one from the other.

And being further examined by M'r Betts, he says:

42. R. D. You say M'r Roemer himself told you about a suit on the catch, two or two and a half years ago; please narrate the conversation that occurred between you at that time.

A. M'r Roemer showed me that catch, and told me that he had a suit with M'r Lagowitz; I did not answer anything.

43. R. D. To what part of the bags were the catches, which you have referred to, applied, in London, between 1861 and 1863?

A. On the top of the frame.

44. R. D. How many of them on each bag?

A. Two of them.

45. R. D. To what part of the top of the frame?

A. The same as this is, (pointing to the drawing in Exhibit A.)

And being further cross-examined by M'r Marshall, he says:

45. Re-X. Where were you born?

A. In Cologne.

P. DIETZES.

Subscribed and sworn to before me, this 29th January, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Examination further adjourned to January 31st, at 11.30 a. m.

N. Y., *January* 31, 1873—11 a. m.

Present, counsel as before.

Examination of the witness, William Simon, resumed by M'r Betts, counsel for defendants:

20. Q. Have you, since the last meeting, examined your books, and found out when it was that you saw the catches referred to at Tiffany's store in New York?

A. Yes, sir; I have.

260 21. Q. When was it?

A. It was on the 12th day of April, 1865.

22. Q. Please read the entry in your book of that day, and state how you know that you saw the catches referred to at that time.

A. "April 12, 1865. Tiffany & Co., to one dozen presentation-belts, $84." I delivered these belts there myself, and persuaded them to buy some bags of us. By that means I saw a bag with a side-catch on like this, Defendants' Exhibit 17.

23. Q. You say, "Had a side-catch on, like Defendants' Exhibit 17." Do you mean that it only had one such side-catch? If not, how many did it have, and where were they fastened to the frame?

A. It had two side-catches, and they were fastened like these on Exhibit 7, except that the ring was fastened separate. The plate did not fasten the two.

24. Q. In answer to questions 1 and 2, you said that you showed M'r Roemer an imported side-catch. Do you know where that particular side-catch is, or what was done with it?

A. I believe it is in the court, together with a whole lot of samples that was exhibited at the Paris Exhibition in 1867. It was exhibited in court. I do not know what name you gave it.

25. Q. You say that you also saw such side-catches at Wood Gibson's, on traveling-bags. Have you found out from your books where you saw them? If so, please state.

A. I have seen them at Wood Gibson's, and from my books I found the following dates: February 23, 1866; May 1, 1866; July 17, 1866.

26. Q. You have spoke of seeing a bag at Tiffany's with these side-catches upon it. To what Tiffany do you refer? Where was their place of business?

A. Tiffany's jewelry-store. Their place of business has been Broadway, I believe, between Grand and Broome streets. I am not positive.

27. Q. Did M'r Tiffany at that time have a department for the sale of imported bags?

A. They had such a department.

And being cross examined by M'r Marshall, he deposes and says:

28. X Q. Did you take into your hands the bag you say you saw at Tiffany's, having a side-catch like the one on Defendant's Exhibit 17?

A. No, sir; I did not.

29. X Q. Where were you when you saw it, and where was the bag?

A. I was outside, before the door first, when I saw it on going in, at the window. I was walking into the store. I walked on. The bag was standing in the window.

30. X Q. What was the size of the bag?

A. I should say about fourteen inches.

31. X Q. Was that the first time you were ever at Tiffany's, which you name by reference to your books?

A. I could not positively say.

32. X Q. Have you been there since that time?

A. Yes, sir.

33. X Q. To sell goods?

A. Either so sell goods or to collect money—one of the two.

34. X Q. You have been in the habit of calling there more or less ever since that time, have you not?

A. Very few times; very little.

35. X Q. Can you swear that it was positively on the 12th day of April, 1865, and not at a subsequent time, that you saw that bag at Tiffany's?

261 A. I can swear positively that it was on the 11th day of April.

36. X Q. The bag was in the window, was it?

A. Yes, sir; but the window was open; not a shut-in window or a locked-up window.

37. X Q. Can you swear that it was exactly the same in every particular like the catch on Defendants' Exhibit 17?

A. Yes, sir; I can, with one exception. It looked a little finer than this.

38. X Q. What kind of a bag was it on?

A. On a traveling-bag.

39. X Q. What kind of a traveling-bag? Describe it.

A. A traveling-bag that opens half the way down. That is all I can describe. It had an outside pocket.

40. X Q. What kind of a frame had it?

A. Something like a French frame, called No. 41.

41. X Q. Whose manufacture was the frame?

A. I don't know.

42. X Q. Whose manufacture is the French 41 frame you speak of, that it was like?

A. Steinmetz' manufacture, so far as I know.

43. X Q. Steinmetz, of Paris, do you mean?

A. Yes, sir.

44. X Q. You say, in answer to question 25, that you have seen them at Wood Gibson's. Referring to your last examina*a*tion, and from your books, you find the following dates: February 23, 1866; May 1, 1866; June 28, 1866; July 6, 1866; and July 17, 1866. Now, can you swear that you saw these catches there in February 23d, 1866, the first date named?

A. I can.

45. X Q. What kind of a bag were they on? Describe it.

A. They were on a whole lot of fine russet-leather bags. My friend, M'r Roemer, saw it too. The frame opened once more, having an intermediate point between the top of the frame and the lower opening point. That is what made me notice it particularly.

46. X Q. Were they foreign made or domestic?

A. Foreign made.

47. X Q. Do you know whose make?

A. No, sir.

48. X Q. Were those catches like the one on Exhibit 17?

A. Yes, sir; only they were heavier and more neatly made.

49. X Q. In every other respect were they the same as those?

A. When they opened they had a catch inside that snapped, and when they shut down they snapped again and stayed down.

50. X Q. Did you handle these bags?

A. Yes, sir.

51. X Q. You say that M'r Roemer was with you; also saw them. How do you know that?

A. Because M'r Roemer sold them goods after me, and these bags were there a good while afterwards.

52. X Q. Is that the only reason why you know that he saw them?

A. That is the only reason.

53. X Q. How do you know he sold these goods?

A. Because young M'r Gibson told me.

54. X Q. How long after that did he sell them goods? I mean after February 23, 1866?

A. I suppose a couple of years afterwards. I could not exactly tell, but I know he did sell these goods afterwards.

262 55. X Q. Where did Wood Gibson keep at that time?

A. Up Broadway, I think, a little above Tenth street.

56. X Q. Was February 23, 1866, the first time you were ever at Wood Gibson's?

A. I think so.

57. X Q. Since then you have been in the habit of going there, more or less, for a number of years, have you not?

A. A very few times I was there only.

58. X Q. Did you make any memorandum of the bags you saw with catches on them, and the time you saw them?

A. No, sir; I made no special memorandum.

59. X Q. Did you make any memorandum of the catches you saw on a bag at Tiffany's, and the time you saw them?

A. I made no memorandum, only I brought to them then a dozen of presentation-belts, and tried to persuade them to buy some bags of me.

60. X Q. Is that the only time you ever sold them any presentation-belts?

A. That is the only time that I brought them there.

61. X Q. But not the only time you sold them any?

A. I cannot tell whether I sold them any more presentation-belts.

62. X Q. Where did you get the Exhibit No. 16, offered in evidence at your last examination, and how did you get it?

A. I got that from an imported bag, in the city of Newark; I had it taken off from a traveling-bag.

63. X Q. When?

A. Last week; I got this.

64. X Q. From whom?

A. From M'r Griffiths. Not exactly from M'r Griffiths, but from M'r Griffiths' traveling-bag.

65. X Q. Was that the first time that you saw it?

A. No; I saw it before.

66. X Q. How long before?

A. Several years.

67. X Q. Now, will you state when and where you first saw that particular catch, Exhibit 16?

A. I saw that about several years ago, in the city of Newark, in a private boarding-house.

68. X Q. State the year.

A. In about 1870, I saw this on a traveling-bag.

69. X Q. You say, in your third answer, that in going home from Trenton, after the hearing of our case, you pulled out an imported side-catch, and asked M'r Roemer whether he had ever seen or worked such catches before; have you that particular catch referred to in that answer?

A. I have not got that.

70. X Q. Where is it?

A. It is in Trenton, where all the other samples are.

71. X Q. Do you mean it was on the passage from Trenton to Newark that you had this conversation you speak of with M'r Roemer?

A. Yes, sir.

72. X Q. How long have you been in the bag business?

A. Since 1862, I think.

73. X Q. Where?

A. In Newark, New Jersey, first.

74. X Q. Where is your native place?

A. Prussia; Wargrowic is the town.

75. X Q. That is Poland, is it not?

263 A. No, sir; it is Prussia.

76. X Q. Is it not sometimes called Prussian Poland?

A. Yes, sir; and it is also called West Prussia.

77. X Q. Did you know that a suit was going on against Samuel Lagowitz and others, of Newark, for infringement of the patent on which this suit is brought, during 1870 and 1871?

A. I think I did: yes, sir.

78. X Q. Were you not requested to give evidence for the defense in that action?

A. I offered my evidence, and it was refused by M'r Lagowitz.

79. X Q. For what reason?

A. He had enough; plenty.

80. X Q. Did M'r Roemer, the plaintiff, ever refuse to sell to you, or your firm, catches for traveling-bags, on the same terms that he sells them to others?

A. I never asked him to sell me any.

81. X Q. Do you keep an exact account of the number of catches that you make and use on traveling-bags, like the ones described in plaintiff's letters-patent, Exhibit A?

A. We do keep an account of them; we make a return of the number every three months to the court.

82. X Q. How many returns have you made?

A. I could not really tell just now, as I do not ma*d*e the returns; our book-keeper makes them.

83. X Q. Who is your book-keeper that makes the returns?

A. M'r Hirsch; I don't know his first name.

WILLIAM SIMON.

Subscribed and sworn to before me this 31st day of January, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Examination adjourned to *E*ebruary 1, 1873, at 11.30 a. m.

JOSEPH GUT*E*AN, J'R,
Examiner.

N. Y., *February* 1, 1873—11.30 a. m.

Present, counsel for the respective parties, as before.

ALBERT JENCH, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and been examined by M'r Betts, counsel for defendants, through M'r William Roemer, as interpreter, the witness not being able to express himself well in English, and the examiner understanding the German language, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Albert Jench; I am thirty-eight years old; I reside in Chrystie street, No. 153, in the city of New York; I am a bag-maker.

2. Q. Were you ever in the employ of Edward Simon & Brothers; if so, when first?

A. Yes; from the month of August, 1865.

3. Q. To what time?

A. Until the end of March, 1866.

264 4. Q. During that time, did you see any samples of foreign bag-frames like Exhibit 17, with ca'ches attached, as shown on that exhibit?

A. The frame that I saw was single instead of double. I have seen them there, and we had there the same as that. The catch was fastened on the middle, it being a double frame.

5. Q. Were the catches on the double frame that you have mentioned constructed like those on Exhibit 17?

A. They were the same catches, only they were ornamented a little more.

6. Q. Do you know where those catches and samples came from?

A. I do not know; but I know that they were frames of Steinmetz, of Paris.

7. Q. How many catches were upon the frame, and to what part of the frame were they fastened?

A. Two catches; and they were fastened on the top.

8. Q. When did you come to this country?

A. On the 13th of April, 1865.

9. Q. Where did you work before you came to this country?

A. In Paris.

10. Who with?

A. For myself.

11. Q. Did you ever see before you came to this country any bags having catches the same as on Exhibit 17?

A. I once made a frame and went to the locksmith to have two catches made the same, after my own idea.

12. Q. State how those catches were made, and how they differed, if at all, from the catches on Exhibit 17.

A. They were made of brass, were bent down and riveted to the top of the frame by a plate. The only difference was that they were simply of round wire, bent down.

13. Q. Who was the lock-maker who made those catches for you in Paris before you came to this country?

A. Faure & Klieber, of Paris.

14. Q. State their place of business.

A. Rue de Maux, Villette.

15. Q. When was that?

A. In the beginning of 1864.

And being cross-examined by M'r Marshall, he deposes and says:

16. Q. Where were you born?

A. In Switzerland; Baden, in Switzerland.

17. Q. Who exhibited to you this frame you saw while at work for Simon Brothers?

A. Simon Brothers had sent the catches, and they were afterwards put on. Where they got them from I don't know.

18. X Q. Where is the frame now?

A. My busin'ss here is to tell you I saw them in 1865. Where the frame now is I don't know.

19. X Q. How long did you work for Simon Brothers?

A. Nine months or so.

20. X Q. How was your attention called to this frame you saw there, with catches on it like Exhibit 7, and who called your attention to it?

A. Well, I will tell you. M'r Edward Simon brought me that catch at the time, and asked me whether we could put them on frames; to which I replied, "Yes; for large bags they will do, but I would not have them for small ones; that they would do for bags of from 11 to 13 inches." Where we got them from I don't know.

265 21. X Q. Can you state the exact time when you saw that frame with catches like Exhibit 17 at Edward Simon & Brothers?

A. The day I cannot give. It was in the last three months of the year 1865.

22. X Q. You say that you were until the end of March, 1866. Where did you go then?

A. Then I went to Lagowitz—Jacob Lagowitz.

23. X Q. Might it not have been early in the year 1866 that you saw the frame and catches?

A. When we had the first ones it was 1865.

24. X Q. Who made the catches for that sample-frame you speak of?

A. He had the catches on a sample-card, on which were also samples of trimmings of other kinds.

25. X Q. Did you see the sample-card?

A. Yes; I saw it; the catch was tacked on to it.

26. X Q. Where is that sample-card now?

A. I don't know that.

27. X Q. How many catches were there on the sample-card?

A. Only one.

28. X Q. And you put it on the frame?

A. I did not put it on.

29. X Q. Who did?

A. I don't know. He had it put on, and gave me the frames with the catches on.

30. X Q. You say there was only one catch on the card; how many were there on the frame?

A. Two; because he ordered the frames so afterwards. The first that he showed me was only a sample.

31. X Q. Then that sample had but one catch on it?

A. On the card there was but one.

32. X Q. How many on the sample-frame?

A. Two.

33. X Q. Who made the two catches?

A. I don't know.

34. X Q. Were those catches made outside of Edward Simon & Brothers' factory?

A. Yes, certainly; he don't make any catches, you know.

35. X Q. Where were they made, and by whom?

A. That I can't tell you. I don't know where he had connections with to have his work made.

36. X Q. Whose sample-card was that—that is, who had issued it?

A. That I don't know. I didn't ask him.

37. X Q. Was it American or foreign?

A. That I can't say.

38. X Q. Has M'r Simon & Brothers got it now?

A. I can't say about that.

39. X Q. Why can't you say about that; that is, whether or not Mess'rs Simon Brothers have got it or not?

A. How can I say anything about that? You must ask M'r Simon about that. I was a workman and he showed me that sample, and I told him to have some made. I didn't ask him where, when, or how.

40. X Q. Can you swear they were just exactly like the catches on Exhibit 17 in construction?

A. No; like them they were not. They were more complicated. As I say, they were not flat; they were ornamental, and the plate was in the middle.

41. X Q. Was there any printing on the card on which the sample was?

266 A. I did not notice that; in fact, paid no particular attention to it; I only looked at the sample.

42. X Q. When was your attention first called to this suit?

A. Well, it happened so: I met Simon, once, at Newark, and he conversed with me; he asked me, before there was anything said about the suit, if I could remember when we made the first catches, and I said yes; I said it was a short time after I went into his employ.

43. X Q. You only know from memory that this was in the last part of the year 1865, do you?

A. It was in 1865.

44. X Q. Do you know this in any other way than from your memory or recollection?

A. I know this from my memory.

45. X Q. Do you know the month that the sample catch and frame were shown you?

A. I have said it was in the last three months of 1865, but which month I could not say.

ALBERT JEUCH.

Subscribed and sworn to before me this 1st day of February, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Examination further adjourned to 2.30 p. m. of same day, at No. 62 Walker street, office of Sayers, Brown & Corlies.

JOSEPH GUTMAN, J'R,
Examiner, &c.

N. Y., *February* 1, 1873, 2.30 *p. m., No.* 26 *Walker street.*

Present, counsel as before.

HENRY J. SAYERS, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Betts, counsel for defendants, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Henry J. Sayers. I am thirty-three years old. I reside in the city of New York. I am a dealer in fancy goods.

2. Q. Were you ever connected with the firm of Calhoun & Robbins?

A. I was with them, and had particular charge of their bag department previous to 1866.

3. Q. Previous to 1866, did you ever see, on imported bags, at Calhoun and Robbins' place of business, any catches for traveling-bags, constructed and arranged like those on Exhibit 17?

A. Of the same general idea, yes.

4. Q. Please state how the catches for traveling-bags were constructed and arranged, which you saw on the foreign bags, prior to 1866?

A. The idea was just the same as this: a saddle connecting the two jaws of the bag; how fastened, I cannot say, whether by a strap or otherwise.

5. Q. Did each end of the brass pieces which you call the saddle, turn down on the side of the jaw?

A. Yes.

267 6. Q. How many of such catches were on each bag, and how were they situated on the frame?

A. Two or more on the top ends and sides.

7. Q. Did you see such bags, prior to 1866, in large or small numbers, and do you know where they were imported from?

A. In small quantities I saw them; they were imported from Paris.

And being cross-examined by M'r Marshall, he says:

8. X Q. Where was Calhoun & Robbins' place of business when you worked there?

A. 26 and 28 Vesey street.

9. X Q. When did you leave that place?

A. Which do you mean, Calhoun & Robbins', or 26 and 28 Vesey street?

10. X Q. You say that Calhoun & Robbins were at 26 and 28 Vesey street when you worked for them; when did you leave them?

A. In 1868 I left them; two years before that Calhoun & Robbins left Vesey street.

11. X Q. Where did they go then?

A. No. 410 Broadway.

12. X Q. Then you were with them at 410 Broadway?

A. Yes, sir.

13. X Q. From whom did they import the bags you saw with catches, which you say embodied the same idea as those on Exhibit 17, shown you?

A. I do not know.

14. X Q. Can you swear that those catches were precisely like those on Exhibit 17, and applied to the bags in the same manner as those are to that frame?

A. I have already been sworn by the commissioner to make my statement to the best of my knowledge and belief.

15. X Q. You say, in answer 4, the idea was just the same; do you swear that the catches were constructed precisely the same as those on Exhibit 17, and applied in the same manner as those are applied?

A. I do not say so.

16. X Q. Have you any of those bags now?

A. No.

17. X Q. Do you know where any of them are?

A. No.

18. X Q. Were you ever in the business of manufacturing bags, or bag-frames and catches, or either?

A. No.

And being further examined by M'r Betts, he says:

19. Re-X. What was the date of Calhoun & Robbins leaving Vesey street; and did you see any of such bags with such catches before you left Vesey street?

A. January 1, 1866. I did see them before leaving Vesey street.

And being further cross-examined by M'r Marshall, he says:

20. Re-X. Such catches you mean as you have referred to, having the same idea?

A. Yes.

HENRY J. SAYERS.

Subscribed and sworn to before me this 1st day of February, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Adjourned to February 5, 1873, at 11 a. m.

NEW YORK, *February* 21, 1873—11 a. m.

268 Present, counsel as before.

GEORGE HOWELL, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Betts, counsel for defendants, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

(Counsel for complainant objects to the examination of this witness, on the ground that no notice has been given or had by the complainant.)

A. My name is George Howell; I am forty-five years old; I reside at Newark, New Jersey; I am a manufacturer of fancy steel goods and bag-trimmings; I am of the firm of Stevens, Roberts & Howell.

2. Q. How long have you been such manufacturer?

A. About twenty-five years; ever since I was a boy.

3. Q. Have you ever made rings and plates for holding the same upon the frames of traveling-bags, like that shown on Exhibit No. 20?

A. Yes, like this; but not exactly that shape.

4. Q. How long have you made such rings and plates?

A. For frames for bags, for about eight years; for dog-collars, about fifteen years.

5. Q. Have you here a sample showing the exact style of such rings and plates which you have made for eight years past?

A. Yes.

(Sample produced and offered in evidence, marked "Exhibit 22.")

I don't swear that this identical one was made eight years ago, but others like it.

(Exhibit objected to as immaterial.)

6. Q. Do you make such plates as that on Exhibit 20 for William Roemer, of Newark?

A. Not of this style; I don't think he has had any of this style.

GEORGE HOWELL.

Cross-examination waived.

Subscribed and sworn to before me this 21st day of February, 1873.

JOSEPH GUTMAN, J'R,
Examiner, &c.

269, 270 NEW YORK, *February* 5, 1873—11 a. m.

Present, counsel for the respective parties.

Adjourned to 1 p. m. of same day.

FEBRUARY 5, 1873—1 p. m.

Present, counsel as before.

HENRY S. DOXSEY, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Betts, counsel for defendants, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Henry S. Doxsey; I am twenty-nine years old; I reside at Brooklyn, N. Y.; I am salesman with H. J. Sayers & Co., of New York.

2. Q. Were you ever in the employ of the firm of Calhoun & Robbins?

A. I was.

3. Q. Where was said firm's place of business while you were with them?

A. 26 and 28 Vesey street, New York; that was until January 1, 1866; I was with that firm until April 1, 1868, at their place of business, No. 410 Broadway.

4. Q. While you were with said firm, in the Vesey street establishment, did you ever see any imported traveling-bags having side-catches upon them? If so, describe how such catches were constructed.

A. I did; they were made with a clamp fastened to the frame by a plate, and the clamp worked over the jaws of the frame.

5. Q. How did such catches differ, if at all, from the catches on the frame, Exhibit No. 17?

A. Only in the manner of the finish.

6. Q. How many of such catches were upon each bag, and to what part of the frame were they applied?

A. There were two, and they were fastened to the top of the frame near the end.

7. Q. When was it that you first saw these bags provided with such catches?

A. In the fall of 1865; we used to sell them early in the spring of 1866.

8. Q. Did you sell any before you moved from Vesey street to Broadway?

A. There were such bags sold by the firm there.

9. Q. How many bags with such catches did you see prior to moving from Vesey street?

A. At least a dozen.

10. Q. After you moved from Vesey street to Broadway, did you see any more bags with such catches?

A. I did.

11. Q. Where did they come from?

A. They came from France.

12. Q. Do you know Mr. Henry J. Sayers?

A. I do.

13. Q. Was he in the employ of Calhoun & Robbins; if so, during what time?

A. He was, from April 1, 1868, until May 1, 1858.

And being cross-examined by M'r Marshall, he says:

14. X Q. Please state the street and number of your residence.

A. No. 36 Third avenue, Brooklyn.

15. X Q. When did you go into the employ of Calhoun & Robbins, in Vesey street?

271 A. In March, 1858.

16. X. Q. Did you continue with them all of the time up to April, 1868?

A. I did.

17. X Q. What was your employment there?

A. I was salesman; I went there as errand-boy first.

18. X Q. You say while there you saw traveling-bags having upon them side-catches; can you state the precise time at which you saw the first?

A. The fall of 1865.

19. X Q. What month in that fall?

A. November.

20. X Q. How do you know it was November?

A. I saw them there in the fall, and I put that as the last month.

21. X Q. You are not certain as to the month?

A. I am not; I am certain I saw them in November; I am sure of that; we always had our fall goods by that time.

22. X Q. When was your attention first called to the matter of this suit?

A. About two weeks ago.

23. X Q. Then you began to think over where you saw these bags there, did you?

A. It did not require any thought. The moment I was told about it, I remembered having seen them in Vesey street.

24. X Q. Had your attention been called to having seen such bags in Vesey street previous to the calling of your attention to the matter in this suit?

A. It had not.

25. X Q. Did you make any memorandum of the time you saw these bags in Vesey street?

A. I did not.

26. X Q. Then you depend on your memory, do you?

A. I do: I know we had them in Vesey street, and we moved in January, 1866; that gives me the date.

27. X Q. Where did you move to?

A. No. 410 Broadway.

28. X Q. What kind of bags were these that you saw in Vesey street, with side-catches?

A. Imported ladies' traveling goods, &c.

29. X Q. About how large?

A. They were various sizes.

30. X Q. Are you acquainted with the different sizes of ladies' traveling-bags?

A. I am.

31. X Q. Now, what size were these bags?

A. From 8 to 12 inch frames.

32. X Q. Were you ever engaged in the making and trimming of traveling-bags?

A. I never have been.

33. X Q. Have you ever been engaged in making locks or fastening for traveling-bags?

A. I have not.

34. X Q. You say the bags you saw there were imported; where from?

A. From France.

35. X Q. Whose manufacture or make were they?

A. That I do not know.

36. X Q. Who imported them?

A. Calhoun & Robbins.

37. X Q. Did they import them direct themselves?

272 A. They did.

38. X Q. From what place in France?

A. From Paris.

39. X Q. Have you seen any of those particular bags that you saw at Vesey street since then?

A. I saw some after they moved to Broadway; they carried some to Broadway with them.

40. X Q. Where are they now?

A. I can't tell.

41. X Q. Please describe how these bags were made.

A. They were a regular leathern bag, opening a part of the way down.

42. X Q. Had they a lock on them?

A. They had.

43. X Q. Describe the lock.

A. It was a spring-lock that fastened with a catch and also with a key.

44. X Q. Did the lock have the place for the key to enter on the top of the frame or jaw, or did the key enter just below the tip or at the side, or, as it is usually called, the front?

A. Both sides of locks were used on different bags.

45. X Q. Were the catches on the bags precisely like the ones on Exhibit 17, and was the mode of fastening them precisely the same?

A. They were the same, except in manner of finish; the clasps were all fastened on by a plate.

46. X Q. Can you swear that the clasp or catch was made with only one piece of wire or metal?

A. I can.

47. X Q. Please state from whom this firm you worked with were accustomed to import their bags from Paris.

A. I do not know.

48. X Q. Did these bags come there with the catches on them?

A. They did.

49. X Q. How do you know these catches you saw on those bags were made and constructed the same as the ones on Exhibit 17?

A. Because they were made, as I answered before, of brass or other metal, fastened on with a plate and closing over the jaws of the bag.

50. X Q. Do you know whether or not the catch was fastened in any way to the plate before it was placed upon the jaws or frame of the bag?

A. It was not.

51. X Q. Did you ever see any of them off of the bags?

A. I did not.

52. X Q. Do you know that the catch was made of one piece of metal?

A. I do.

53. X Q. How?

A. I could see that it was.

54. X Q. Did you sell any of these bags at Vesey street?

A. I think I did.

55. X Q. To whom?

A. It is impossible to say now.

56. X Q. Were they retailing at Vesey street ?

A. They were not.

57. X Q. Then the bags you refer to were sold at wholesale ?

A. They were.

58. X Q What name was given to these particular bags ?

A. No special name ; merely leather bags or satchels.

273 59. X Q. Were the catches brass, or other metal ; and, if other metal, what ?

A. I believe they were brass.

60. X Q. You are not certain, are you ?

A. I am certain that they were brass.

61. X Q. Were there two on every bag ?

A. There were.

62. X Q. Did the plate which held the catches also hold the ring, like the one on Exhibit 17 ?

A. I do not remember.

63. X Q. Were there rings for the handles of the bag ?

A. There were.

64. X Q. Have you ever been in business for yourself ?

A. I have.

65. X Q. When, where, and for how long ?

A. In Brooklyn ; from April 21st, 1868, to May 1, 1869.

66. X Q. What street and number ?

A. On Fulton street ; it was then Fulton avenue ; the numbers have been changed ; the nu*bm*er then was 241 Fulton avenue.

67. X Q. What kind of business ?

A. Retail fancy goods.

68. X Q. Where are you employed now ?

A. At 62 Walker street.

69. X Q. With whom ?

A. H. J. Sayers & Co.

70. X Q. Do they trade in traveling-bags ?

A. They do.

71. X Q. From whom do they get their bags ?

A. From different parties here ; from Edward Simon & Brothers, and from Lagowitz ; very few from Simon & Brothers.

72. X Q. How long since you knew the firm of Edward Simon & Brothers, or any of them ?

A. Two years ago was the first I knew of them.

HENRY S. DOXSEY.

Subscribed and sworn to before me this 5th day of February, 1873.

JOSEPH GUTMAN, JR,
Examiner.

N. Y., *February* 18, 1873—11 a. m.

Present, counsel for the respective parties as before.

MORRIS SCHWERIN, a witness, of lawful age, produced on the part of the defendants, and having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and being examined by Mr. Betts, deposes and says:

1. Q. What is your name, age, residence, and occupation ?

A. My name is Morris Schwerin ; I am thirty eight years old ; I reside at Newark, N. J. ; I am in the trunk and bag business.

2. Q. Are you one of the defendants ?

A. I am.

3. Q. Where did you live between 1854 and 1869?

A. In the State of California, in Nevada, Utah, and Montana.

274 4. Q. What was your business at those places?

A. General merchandize, in different branches.

5. Q. Did you deal at all in trunks and bags?

A. I did.

6. Q. When did you first become a member of the firm of Edward Simon & Brothers?

A. In the latter part of December, 1869; but I did not enter in the business until January, 1870.

7. Q. Are you familiar with the construction and operation of catches for traveling-bags, and the method of their construction with the frames of bags?

A. I am very familiar with them.

8. Q. Will you look at the plate by which the catch on Exhibit No. 14 is attached to the bag-frame, and state how long you have known of the use of such plates for attaching any devices to bag-frames?

(Objected to as immaterial.)

A. To the best of my belief and knowledge I have known these plates to be used for at least ten or twelve years, for the purpose of attaching rings to the frames.

9. Q. Do you know, certainly, whether or not you have known of the use of such plates prior to the year 1866?

(Same objection.)

A. I do. I have sold bags, with those plates and rings attached to them, long before 1866.

10. Q. Have you here a specimen showing how the ring-loops were held by the plate, and how such method of fastening the ring-loops compares with the method ordinarily adopted for fastening catches like that on Exhibit 14?

(Same objection.)

A. I have; here is one.

(Witness produces a specimen, showing that that this ring-loop is fastened by the same size and same kind of plate as the side-catch. They are both of the same construction, made on the same dies and tools, and answer precisely the same purpose. At the other end of the frame produced is still another one, made of the same plate, with the centre raised up so as to hold the side-catch above the frame in a similar manner as ring-loops and side-catches are attached on goods that come from Europe. Specimen produced, offered in evidence, marked "Exhibit 20," objected to.)

11. Q. Please look at the side catch, Exhibit No. 16, and state whether or not, in your opinion, there would be any invention, as distinguished from ordinary mechanical skill, in making such a side catch as those shown on Exhibit 20.

A. I find no difference in either of them; they all answer one purpose.

12. Q. Please state fully the reasons for your opinion.

A. My reasons are these: The nature of the side catch is precisely the same in both cases; the fastening on Exhibit 16 is the same as this smallest fastening on Exhibit 20 with the plate left out, for the plate on Exhibit 16 is of no earthly use to the side catch; for I can fasten the side catch with the same strap that holds the side catch on Exhibit 16, with the same strap through the body of the frame, and then bending the ends open on the inside, doing away thereby with riveting entirely. It would then hold fully as well as it was was riveted.

13. Q. Could the catch part of Exhibit 16 be fastened to the frame of a bag by rivets through the strap over the catch without using the plate?

275 A. Yes, sir; it is done so on the smallest one on Exhibit 20.

14. Q. Do you consider that it would require anything more than ordinary mechanical skill to adapt any or all of such methods of fastening the catch to the bag if the catch itself was previously in existence?

A. I do not, for I myself have made several different styles, and I am no mechanic of hardly any consideration.

15. Q. Have you with you a specimen of the kind of catch used by the defendants at present?

A. Yes, sir; here is a specimen.

(Specimen offered in evidence, marked "Exhibit 21.")

16. Q. Who designed the catch Exhibit 21?

A. I did myself.

17. Q. From what, if anything, did you take the idea of the knot on the shaft of the catch?

A. We had a sample-card in our office, which was exhibited at the exhibition in Paris in 1867, that had such a knob on; attached to that sample-card, among other side catches, was one very similar to Exhibit 21. I took my design from that, cast one in lead, and then worked it up with a knife until I got it so that I thought it would answer our purpose. I sent it to the iron-foundry and had duplicates cast from it.

18. Q. When you returned from California, and found the firm of Simon & Brothers, were they using any catches for traveling-bags? If so, please describe the catches, and how they were fastened to the frames.

A. They were using a catch very similar to this Exhibit 16. We fastened them then with this very loop as in Exhibit 20 to the frames with two rivets.

And being cross-examined by M'r Marshall, complainant's counsel, he says:

19. X Q. Who made Exhibit 20, and when was it made?

A. I did; at least, I fastened these three articles on it—the two side catches and one ring and ring-loop. I made it, I think, last Saturday morning; I think I attached the article on Saturday morning.

20. X Q. When you designed the catch with the knob on the shaft, marked "Exhibit 21," you had seen the catch used by William Roemer for the infringement of which this suit was brought, had you not?

A. I had not, nor did I know that there was such a person as Roemer until the latter part of 1870; he was then shown to me on the street, but not introduced.

21. X Q. Where were you when you designed this catch?

A. In our shop on Fair street, Newark, N. J.

22. X Q. In what year?

A. In 1870, about the month of February or March; I can't say exactly which, but I think it was in February.

23. X Q. You were then in the bag business, and in partnership with Edward Simon & Brothers, were you not?

A. I was.

24. X Q. Do you know who made the catches on Exhibit 20?

A. I do not.

25. X Q. Are they of your firm's order, or of William Roemer's order, the plaintiff.

A. I could not say who made, or where they were made. I picked them out of a lot of rubbish in the shop and put them on.

26. X Q. Had you not seen the Roemer catch, so called, at the time you say you designed the catch Exhibit No. 21?

A. No, sir; I had not.

276 27. X Q. How long were you in Newark previous to your becoming a partner of Edward Simon & Brothers?

A. I believe a day; my arrangements for the partnership were all made in the city of New York, at the store, I think, 434 Broadway; as to the number of the store I would not be certain—either 434 or 443.

28. X Q. How long had you been in New York?

A. About four or five weeks. I believe I arrived in New York in November, 1869, in the latter part; either the 29th or 30th of November, I think.

29. X Q. Had you known Edward Simon Brothers previous to this?

A. Yes, sir; I had known all three brothers.

30. X Q. For how long?

A. I suppose ten years previous. I knew Edward Simon since the early part of 1854.

31. X Q. When you came to New York you came to them at their store, did you not?

A. No, sir, I did not; when I came to New York I put up at the Prescott House, on Broadway, corner of Spring street.

32. X Q. How soon after did you see them, or any of them, at their store?

A. I think some three or four days elapsed before I saw either of them, they having removed from their former place, and I did not know their address.

33. X Q. What department of the business did you interest yourself in at the time you became a partner with them?

A. In the beginning I took charge of the office business and the packing-room, where goods come down from the factory to be packed.

And being further examined by M'r Betts, says:

34. R. D. Are you an inventor yourself?

(Objected to as not being proper to go into on that subject.)

A. I am, somewhat.

35. R. D. Did you know at the time you designed the catch, Exhibit 21, that there was any patent upon such catches?

(Objected to as irrelevant and impertinent at this time.)

A. I did not.

M. SCHWERIN.

Subscribed and sworn to before me this 18th day of February, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

United States circuit court, district of New-Jersey.

WILLIAM ROEMER
vs. } In equity.
EDWARD SIMON.

NEW YORK, *February 15th*, 1873.

Proofs for final hearing, Edward G. Thompson, one of the examiners of the U. S. circuit court for the southern district of New York, by consent of counsel for the respective parties, under and pursuant to the 67th rule in equity, as amended.

277 NEW YORK, *Feb'y* 15, 1873—2 p. m.

Present, counsel for both parties.

DANIEL WHITLOCK, a witness on the part of the defendants, being produced, sworn, and examined, to interrogatories propounded by M'r Betts, deposes and says:

1. Q. What is your age, name, residence, and occupation?

A. Daniel Whitlock. I am forty years of age. I reside at Newark, New Jersey. I am a manufacturer of machinery.

2. Q. For how long a time have you been familiar with the construction of mechanical devices?

A. About twenty or twenty-five since I commenced my trade, and so on through.

3. Q. Have you ever been an inventor?

A. Somewhat; yes, sir; I have five or six patents.

4. Q. Do you consider yourself competent to speak of differences and similarities of mechanical contrivances, and to state what modifications in the same would require inventive ingenuity and what was mechanical skill?

(Objected to, on the ground that it is asking the witness matter which his testimony will show neither for or against, and as being impertinent.)

A. No, sir.

5. Q. Will you look at the bag-catches Exhibit No. 16, and also at the catch on the frame Exhibit No. 14, and state whether or not, in your opinion, after a person had seen the catch Exhibit 16, it would require any inventive ingenuity to make the catch on Exhibit 14?

(Objected to, on the ground that the question is impertinent as to what had been seen, and also that it is asking a question relative to a matter which has already been adjudicated upon, and is not pertinent to the issue involved.)

A. Well, it don't seem to me to require any; the manner of holding the fastening seems to be the same in both cases; that is, this part of it—the clasp. The manner of fastening it to the frame, I see, is different, but it can be the same way. This fastening here, the band over the clasp, is the same in both, removing this—the flat plate of Exhibit 16.

6. Q. Do you find in each of the two fastenings Exhibits 14 and 16 a combination of the clamp and band for holding it in place?

A. I don't see any different combinations in one th*e*n I see in the other.

7. Q. Suppose any ordinary mechanic were given a clasp such as that in Exhibit 16, with directions to fasten the same to the jaws of the traveling-bag, so that the clasp could turn, could or could not such mechanic, with ordinary mechanical skill, devise a variety of different ways of attaching such clasp to the bag?

A. Yes, sir; *he* could be punched, and the bands of Exhibit 16 rivet*t*ed on.

And being cross-examined by M'r , says:

8. X Q. Do you consider that, because out of a machine or device for performing a certain function or office another may be made to perform the same office or function, *that* they are the same, and the making of the second would require no inventive skill?

A. I should consider not. If I understand you that another may be made, then it requires inventive genius.

9. X Q. You say that you are an inventor to some extent, and have taken several patents; are not patents granted on machinery and devices where alterations and improvements are made, which improvements

278 show utility, combined with economy, over other devices or machinery for performing the same functions?

A. Yes, sir; they are.

10. X Q. Do you see anything on Exhibit 16 intended to fasten the clasp upon the jaws of a traveling-bag, and independent thereto, attached?

A. I see none in this device, Exhibit 16.

11. X Q. Which do you regard the more simple of the two devices, the one shown on Exhibit 14 or the Exhibit 16?

A. The device on 14 is the simplest, if you refer to the whole price of each.

12. X Q. Could not the plate, clasp, and rivets, as shown on Exhibit 14, be manufactured and placed upon the jaws of bags much cheaper than the device marked Exhibit 16 could be?

A. If you refer to the whole piece, it can; if to the clasp only, it cannot be done cheaper; the clasp and band of Exhibit 16 could be put on cheaper than Exhibit 14.

13. X Q. From your knowledge of mechanics, do you not regard that Exhibit 16 was calculated and intended by the mechanic who made it to be used for the same purpose that the device on Exhibit 14 was, by which device I mean the clasp, the plate for holding the same upon the jaws of the bag, and the rivets for riveting the plate down?

A. I should not consider it so; the plate in Exhibit 16 seems to be more for ornament than use; it is not needed to hold the band or clasp.

And being further examined by M'r Betts, says:

14. R. D. Do you or not regard the Exhibit 16 as a fastening for a bag?

A. I regard it as a fastening for a bag.

15. R. D. As a whole, do you consider that it accomplishes the same purpose as the catch on Exhibit 14, and in addition thereto, the purpose of greater ornament?

A. I do.

DANIEL WHITLOCK.

Subscribed and sworn to this 15th day of February, 1873.

E. G. THOMPSON,
Examiner, U. S. C. C., S. D. N. Y.,
and Special Examiner herein by consent of Counsel.

Examination adjourned till *February* 18*th*, at 11 a. m.

Rebutting proofs on the part of the defendants.

N. Y., *March* 15, 1873—10 a. m.

Present, M'r Betts, counsel for defendants, and M'r Marshall, counsel for complainant.

REINHARDT SCHMIDT, a witness, of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Betts, counsel for defendants, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Reinhardt Schmidt; I am forty-four years old; I live in Newark, N. J.; I am a maker of frame locks.

279 2. Q. Where is your place of business?

A. No. 13 Mulberry street, Newark, N. J.

3. Q. In what building?

A. Duncan's building—the Union building.

4. Q. Did you ever make a lock for William Roemer like that on the bag defendants' Exhibit 15?

(Objected to as immaterial, as the lock is not in controversy.)

A. Yes.

5. Q. Did you ever make more than one for William Roemer like that?

A. No; I made him the first one.

6. Q. State the time when you made that lock for him?

A. In June and July; it took me about two and a half months to make it; that was in 1869.

7. Q. How do you fix the month when he came to you and asked you to make that lock?

A. That was on June or July; I left the business about ten or fourteen days after I finished the lock; it took me several months to finish it, and I had it done about ten or fourteen days before I left the business.

8. Q. State when you left the business, and produce any document, if you have any, to show when you changed the business?

A. I went into business with Newman, manufacturing satchel-frames, on the 27th of October, 1869, and for some time before that I was experimenting for myself. I produce my contract with Newman, which shows when I went into the new business.

(Paper offered in evidence, marked "Exhibit No. 23, B. G. J.")

(Objected to as immaterial.)

9. Q. Do you know William Roemer, the complainant, who is here present to-day? If so, how long have you known him?

A. I do; I have known him about eight years.

10. Q. Do you know what his connection with the firm of R. Newman & Co. was in 1869?

A. I don't know of any other connection, except that he was a customer of R. Newman & Co.

11. Q. Do you know the reputation of said William Roemer for truth and veracity?

A. As far as I have known M'r Roemer for the last few years in respect to patents—no. I should like to have the question made more definite, so that I may understand.

12. Q. Do you mean that you don't know whether his reputation in those respects is good or bad, or do you mean that you do know whether it is good or bad?

(Objected to as leading.)

A. I want that defined more distinctly; I don't understand.

13. Q. Is said Roemer's reputation for truth and veracity good or bad?

A. I should like to have that made into a more definite question. If I were to be asked if, in case M'r Roemer were giving testimony in a patent case, I should believe him, I should have to say no, and even though he swore to it.

(Objected to as irresponsive and improper.)

14. Q. How did he get the lock that you made for him like that on Exhibit 15 from your place of business?

(Objected to as impertinent.)

A. I either took it to him or he came and fetched it away; I am not sure.

15. Q. What is your native place?

280 A. In Prussia, at Solirgen.

16. Q. Do you speak English, or have your answers in examination been given in German?

A. Of course I have given them in German. I speak very little English, otherwise spoken in English in this matter.

The foregoing testimony has been given by the witness in the German language, the complainant, M'r Roemer, interpreting at the request of the examiner, and M'r Marshall's request, under the supervision and correction of the defendant, M'r Simon, and the examiner, who is conversant with the German language.

JOSEPH GUTMAN, J'R,
Examiner.

16. *A* Q. Would you believe William Roemer under oath?

A. In respect to his patent matters, no; in other respects I have nothing against him.

And being cross-examined by M'r Marshall, the witness deposes and says:

17. X Q. In what street and at what number of the street did you make the lock for William Roemer referred to?

(At the request of M'r Marshall, the defendant, M'r Simon, acts as interpreter on the cross-examination of the witness, under the supervision of M'r Roemer and the examiner.)

A. At No. 7 Lawrence street, Newark.

18. X Q. Can you positively swear that it was in June or July, 1869, that you made that lock?

A. Yes.

19. X Q. When was the order given you to make that lock?

A. That was in June some time. I don't know the date. M'r Roemer came to me and told me to make a new lock.

20. X Q. Have you kept any account of the time which you made that lock?

A. No.

21. X Q. What makes you think the order was given you in June, 1869?

A. I know that as certain as I am sitting here. I know positively that I worked on it nine or ten weeks off and on.

22. X Q. When did you deliver to M'r Roemer the lock?

A. That I don't know certain any more.

23. X Q. Now state the exact time when you delivered to M'r Roemer the lock.

A. That I can't do. He certainly did not get the lock before it was finished.

24. X Q. When did you first begin to work for R. Newnan & Co.?

A. I cannot give the exact date, but I can give it on Monday by look- at the books, if it is required.

25. X Q. You commenced to work for them before agreement Exhibit 23 was signed, did you not?

A. That I cannot say certain. I can tell that from the books of R. Newman & Co.

26. X Q. Please state the reason why you would not believe M'r Roemer in patent matters.

A. Because M'r Roemer showed me things that I already knew, and which he said he was going to patent; as, for instance, last summer I had an idea of a lock, which I got a patent for; then Roemer came and said that he already had had this lock, which I knew was not true, and

I got it patented; various other little matters which I can't detail.

281 27. X Q. M'r Roemer told you that the lock was old on which you got your patent, did he?

A. Yes; I was accustomed to this with M'r Roemer; that he would come from time to time and see what I was making, and if he found something in it that suited him he took it and worked it out for himself, and would take them around claiming them as his.

28. A Q. What patent of yours did M'r Roemer claim as his?

A. Until now he has not done it with any; he wanted to dispute my own patent that I had; this handle-cap, for instance, on Exhibit 15, is patented, and this is an example; with my knowledge M'r Roemer had the handle-cap made in 1869—(objected to by M'r Marshall as irresponsive)—and said that he would have it patented; upon which I told him that it was not patentable; that there was a frame there, which he had seen, with this handle-fastening on.

29. X Q. Has M'r Roemer got a patent on that handle-cap?

A. I don't know, but he wanted to take one out.

30. X Q. What is the patent of yours that you refer to in answer 26?

A. For a lock on top of the frames.

31. X Q. When did you get that patent?

A. I don't know exactly; last year or the year before; I believe April, 1872.

32. X Q. Is the patent in your name?

A. Yes, sir.

33. X Q. Have you any other patent?

A. Yes, sir.

34. X Q. On locks?

A. Handle-fastening and catch.

35. X Q. This lock patent which you speak of is the only patent you have on a lock, is it?

A. Yes.

36. X Q. Did not M'r Roemer tell you that he had such locks in stock as you claimed for three years previous?

A. That is possible.

Subscribed and sworn to before me this 15th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner, etc.

Examination adjourned to March 18, 1873, at 11 a. m.

JOSEPH GUTMAN, J'R,
Examiner, etc.

NEW YORK, *March* 18, 1873—11 a. m.

Present, M'r Betts, counsel for defendants, and M'r Marshall, counsel for complainant.

HENRY SPEIR, a witness, of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Betts, deposes and says as follows:

1. Q. What is your name, age, residence, and occupation?

282 A. My name is Henry Speir; I am fifty-two years; I live in Newark, N. J.; I am a manufacturer of shawl-straps.

2. Q. Do you know M'r Roemer? If so, for how long have you known him?

A. Yes; I have known him for two, three, four years; he is a customer of mine.

3. Q. Do you know the defendants, Edward Simon Brothers; are they customors of yours?

A. Yes; they are not customers of mine.

4. Q. Are they competitors of yours in business?

A. Yes; they are competitors.

5. Q. Do you know William Roemer's reputation for truth and veracity in the community?

A. Yes; he has an honest reputation, as far as I know.

6. Q. Do you know his reputation for truth and veracity in regard to patent matters in which he is interested?

(Objected to, as having been fully covered by the former question and answer.)

A. On that I can lay no weight.

7. Q. What do you mean by saying that on that you can lay no weight?

A. In respect to patents I lay no weight on it.

8. Q. Would you believe him under oath in relation to patent matters in which he is interested?

(Objected to, as covered by previous questions and answers.)

A. No.

9. Q. What is his reputation in the community in regard to patent matters?

(Same objection.)

A. In part he is made a laughing-stock of.

And being examined by M'r Marshall, he says:

10. X Q. Have you ever had any dealings with M'r Roemer in patent matters?

A. No.

11. X Q. What reason have you for disbelieving him in patent matters?

A. The reason is that which I will state in relation to a catch: This frame here, (Exhibit No. 10)—not exactly the frame, but the same like this I have made in 1842, and up to 1846. At this time I had made the clamps (indicating the catch on the exhibit) by the gross, and then I riveted them on to the frames. Those clasps (catches) were at that time not riveted on to the frames; they were only clasps that were put on; as these catches, which were only put on, became lost when travelers took them off and put them in their pockets, I had them rivited on, so that it accomplished the same result as this here; any further I could not say.

12. X Q. Where were you born?

A. Sagan, Silesia, Prussia.

13. X Q. When did you come to the United States first?

A. In 1866, 14th or 15th of August.

14. X Q. Did M'r Roemer ever buy goods of you?

A. Oh, yes, very many, and until a while since; he sold me some leather a little while ago.

15. X Q. Does M'r Roemer trade with you now?

A. At the present time not; bussiness is not brisk, but I hope it——

16. X Q. Have you not, within two or three years, told others that you never saw anything like William Roemer's bag-catch, for which this suit is brought, previous to your seeing his?

A. No; that talk I never had with anybody. I remained quiet about it, because it was not my article of business

283 17. X Q. Did you not tell M'r Roemer so at one time?

A. I don't know that I ever spoke about these catches. (To M'r Roemer:) We certainly never spoke about them.

18. X Q. Did not one of the M'r Simons request you to give evidence in this suit, and you told him that you could not give any evidence in regard to the previous use of this catch?

A. M'r Simon was in my shop—both brothers, William and Edward—and asked me if I had never seen such a catch or clasp. I answered him that I had already made them, in 1842, for the fair in Frankfort; not this construction. They asked me if I would give evidence regarding what I knew or had seen; to which I answered, this man does not compete with me in business; if I was making bags I would have known long ago what to do about it.

19. X Q. When was this conversation you refer to?

A. It would be about five or six months since; I cannot say exactly; about that time.

20. X Q. And you never had any conversation with any one previous to that on the subject?

A. No.

And being further examined by M'r Betts, says:

21. R. D. How did the catches which you made for the fair in Frankfort, in 1842, differ from the catch on Exhibit 10, if at all?

(Objected to as immaterial.)

A. It was a clamp like this, only a little narrower, which was stuck on; that was all the difference.

22. R. D. When you made these clamps like that on Exhibit 10, and riveted them on, how did they differ from that on Exhibit 10, if at all?

(Objected to as leading and immaterial.)

A. The difference was none at all; we made it simpler with iron nails.

23. R. D. What did you do to rivet the clamps on—how did you fasten them on?

(Objected to as immaterial.)

A. With ordinary sheet-iron; a sheet according to the width of the catch; this was fastened by two iron tacks.

(Answer objected to as not corresponding with the explanation of the witness.)

24. R. D. When was it that you put the catch on with the sheet-iron, fastened by two tacks?

A. In 1842, 1843, 1844, 1845, 1846.

25. R. D. At what place?

A. In Sagan.

26. R. D. Do you know anything else besides the matter of the catches which causes you to disbelieve Roemer's statements about patent matters?

(Objected to on the ground that the witness has been fully interrogated as to his belief in regard to the character of the plaintiff by counsel on his first examination.)

A. Nothing else besides that.

And being further cross-examined, he says:

26. R. Ex. The piece of sheet-iron that held the catch on the frame, which you say you made, was bent round the catch, was it?

A. Yes; around the catch.

HEINRICH SPEIR.

Subscribed and sworn to before me this 18th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

284 LEWIS HILBRECHT, a witnesss, of lawful age, produced on the part of the defendants, having been by me first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Betts, says as follows:

1. Q. What is your name, age, residence, and occupation?

A. My name is Lewis Hilbrecht. I am thirty-seven years old. I live at Newark, N. J. I am a die-sinker and tool-maker.

2. Q. Do you know William Roemer, the complainant here present; if so, how long have you known him?

A. I do; I have known him about six or seven years, I think.

3. Q. Do you know what his reputation for truth and veracity is in the community?

A. Well, I could not tell anything personally myself about it.

4. Q. I want to know not your personal experience, but his reputation from others in the community.

(Objected to.)

A. In general, do you mean? I don't understand that question exactly.

5. Q. Please state what his reputation for truth and varacity is, either in general or particular; give what you know about it.

A. I could not tell you anything at all about it, because I have had no personal dealings with M'r Roemer, except what I have heard from others, that is all.

6. Q. State what his reputation is as you hear it from others.

A. I could not lell whether it is business spite or what, but men in his line of business seem to be down on him all over; they don't seem to give him the best name in regard to inventions and patents; for my part, I have no ill feellings, one way or the other.

7. Q. What name do they give him as to his truth and veracity in relation to inventions and patents?

(Objected to as irrelevant and immaterial as to what he hears said.)

A. That is pretty hard work for me to find a proper English name, for some say it is a patent desire of his to try and get round every patent; I could not exactly name it any other way; or have it all for himself, or to get around it one way or the other.

8. Q. From what you have learned about his reputation for truth and veracity, would you believe him under oath?

A. Well, I could not answer that question at all, because I have not had enough to do with him; it would be pretty hard work for me to believe any man under oath nowadays.

L. HILBRECHT.

Subscribed and sworn to before me, this 18th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

Examination further adjourned to March 19th, 1873, at 11 a. m.

JOSEPH GUTMAN, J'R,
Examiner.

N. Y., *January* 19, 1873,—11 a. m.

Present, counsel for the respective parties as before.

WILLIAM SIMON, defendant, recalled by M'r Betts, and being further examined, deposes and says as follows:

285 1. Q. Have you been before examined in this case?

A. Yes, sir, I have.

2. Q. Did you ever have any interview with Edward V. Fargis, of Tiffany & Co., and with Albert Crouse, formerly of Schuyler, Hartley & Graham, in relation to their knowledge of the sale of bags with catches upon them like those described in Roemer's patent, on which this suit is brought? If so, please state when you had such interviews, for what purpose you had them, and what occurred at such interviews.

A. I had. I was at Tiffany's some time last year, and saw the gentleman mentioned, I did not know his name, and asked him about the side catches. He told me that I should not bring him to court; he rather don't want to know anything about it. I asked him again, and he answered that he did not know whether he had seen it or whether he had not seen it. I told him that I was positive, and he told me he had rather not go to court; that was about the conversation. I have also seen M'r Crouse during the last year; he told me he could not recollect whether he had seen anything of that kind.

And being cross-examined by M'r Marshall, he says:

3. X Q. Did the person that you talked with at Taffany's, at that time, tell you his name?

A. No.

4. X Q. Did you know his name?

A. I know him by sight.

5. X Q. Did you know the gentleman by that name at the time?

A. No, sir.

W'M SIMON.

Subscribed and sworn to before on the 13th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

LEWIS HILBRECHT, recalled as a witness for the defendants, and being examined by M'r Betts, counsel for the defendants, deposes and says:

(Objected to on the ground that the witness was examined yesterday, and his examination exhausted and closed.)

9. Q. What business were you in in 1865; with whom, and where?

A. From 1864 till 1865 I was in business with Frederick Reynolds, at Newark, in the dice-making, tool-making, making ornaments, and brass-work generally.

10. Q. During that time did you make any catches for traveling-bags, similar to those on which this suit is brought?

(Objected to.)

A. Yes, sir.

11. Q. Describe the catches.

A. The first catches I made were out of wire bent up at a right angle on each side, to be fastened with a loop on the top of the frame, or on the side. I then had some cast, but I have not made enough of them to make a business, or get a patent, or anything of the sort. I did not consider it worth. Some time after, I improved it.

12. Q. What was the loop with which you fastened the catch to the traveling-bag?

(Counsel for complainant objects to the entire examination of
286 this witness, he having been examined, and his examination
closed, and no examination is admissible except what is in rebuttal.)

A. A plain piece of brass cut out and bent in the centre to allow the catch to pass through for working.

13. Q. Describe the improvement you spoke of.

A. Several months after that I put a ring on the top of it to simplify the whole fastening on the handle. I can give a design of it, if wanted.

14. Q. Produce a design of this, and of the former if you have it.

A. I do so. (Witness produces diagram.) Fig. 1 is my first invention, fig. 2 is my improvement.

(Diagram marked "Defendants' Exhibit 23½, J. G., J.")

(Counsel for complain't objects to the diagram going in as evidence.)

15. Q. Have you in your possession an original catch that you made while in business at that time?

A. I have them all yet, but neglected to bring them along, by mistake. I left them in my other coat.

16. Q. You made these drawings immediately after seeing the original catch, and not after recollection, of same year?

A. I made the drawings after the original catches and from my memory, and as correct. They are after the original catches.

17. Q. At what time did you make the first catch of which the drawing is an exhibit?

A. I made the first one on the stopping time of July, 1864, at the same time when I was making patterns for buckles.

18. Q. By what can you make definite the time at which you made them?

A. I made it at the same time when I made patterns for buckles; I know that was at that time.

19. Q. At what time did you make patterns for buckles?

A. Well, about July. I received the patent from the Patent-Office in October of the same year.

20. Q. You made the patterns for the catch before the patent for a buckle was granted you?

A. I did, or about the same time.

(Counsel for defendants offers in evidence the Patent-Office Report of 1864, vol. I, containing record of the patent granted to Lewis Hilbrecht, of Newark, N. J., for mode of fastening on buckles, granted October 4, 1864. It is marked "Defendants' Exhibit 24.")

(Objected to by counsel for complainant.)

21. Q. Is there any other circumstance by which you can specify the time at which you made the catch?

A. I could not tell any more than just about the—that it was before the assassination of Lincoln; I know that.

22. Q. How do you know it was before the assassination of Lincoln? What circumstance do you recall about the assassination?

A. I got them up before or at the *the* time I got up the buckles; that was a year, or half a year; six months before, at least.

23. Q. Did you drape your store in mourning at that time?

A. We did; the whole house.

24. Q. Do you recollect at that time seeing or having on hand the catches described?

A. I do.

25. Q. For what purpose did you make the catches?

A. For the purpose of preventing bags to open.

26. Q. Did you make them for any other purpose than to attach to traveling-bags?

287 A. Not to my knowledge.

27. Q. Do you know the plaintiff, William Roemer?

A. I do.

28. Q. How long have you known M'r Roemer?

A. Seven or eight years; it may be six.

29. Q. Do you know his reputation for truth and veracity?

(Objected to as having been examined in all that line.)

A. I could not tell anything to his disadvantage, except it should be a question in regard to those catches.

30. Q. Knowing his reputation for truth and veracity, would you believe him under oath?

A. I can hardly answer that question.

31. Q. Are you the inventor of this catch that you describe?

A. I have invented this first one, and at that time, in 1864, probably somebody else might have had the idea—I can't tell; but I claim this as an original invention of mine at that time; and the second one is an improvement from the first one. The idea has been given to me, but I improved it according to my best knowledge, because I did not think that the first one would amount to anything. I have made and sold both of them, but never thought of taking a patent out on either one. I did not think that it would pay, or was worth it.

32. Q. M'r Roemer swears that he has taken out a patent for, and invented, the same invention in 1866. Would you believe him under oath?

(Objected to.)

A. I positively would not, if that is the case.

33. Q. You say you sold these catches; to whom did you sell them, and where?

A. I have sold them to Levi, I think—Levi & Drescher, I think—I can't recollect the names of the firm. M'r Levi was the man that gave me the idea of the improvement.

And being cross-examined by M'r Marshall, he deposes and says:

34. X Q. When did you make these fasteners you speak of for Levi & Drescher?

A. I made some of the first ones for Levi in 1864 and the beginning of 1865, and for Levi & Drescher in, I guess, in 1866, in the spring—that is, in the early part of the year.

35. X Q. Are you sure that in 1866 that you made the catches for Levi & Drescher?

A. Levi always ordered them himself, but I am not sure that he came and got them at the time I have specified. Whether I am correct with their partnership I could not tell so exactly, but I know they have been together and got some from me.

36. X Q. What is M'r Levi's other name?

A. You have the best of me there; I think Isidor; I never asked him.

37. X Q. Where is he now?

A. I don't know.

38. X Q. Where is Drescher now?

A. I could not tell you, either.

39. X Q. Do you know what business he is in now?

A. The last I saw him or heard from him he was in the employ of M'r Simon; foreman, or something of the sort.

40. X Q. How long ago is this that you heard that he was in their employ?

A. From when I don't know how long he was there; I could not tell you; he is there now; I think he is there now.

41. X Q. He is now in partnership with Drescher there?

288 A. It seems not.

42. X Q. Where did you have the first casting made that you mention in your direct examination—where, by whom, and when?

A. In Newark, by Philip Zuzi, in 1865.

43. X Q. Which casting was it, the one marked "No. 1" or "No. 2?"

A. No. 2. No. 1 was made of solid stock-wire, iron as well as brass.

44. X Q. Are you positive that you made a catch like to No. 1, in Exhibit 23, previous to obtaining the letters-patent mentioned in Exhibit 24?

A. Yes; at about the same time or shortly before. I was working on the two things at one time; that is, at the stopping time, or July.

45. X Q. For whom did you make them?

A. For my own self. I got them up for my own self, and showed them to M'r Levi to hear his opinion about it.

46. X Q. What did you do with them?

A. He said he would try them, and put them on frames to see how they worked, and whether it was worth while to make a regular staple article of it. A short time after that he thought it could be improved, and gave me the idea of the one represented as No. 2 there, (indicating Exhibit 23.)

47. X Q. What did he do with them?

A. He put some on bags, and sold them, I believe.

48. X Q. Do you know that he put some on of your own knowledge?

A. Certainly; in my presence, in order to try and see how they worked.

49. X Q. When did you give them to Levi?

A. Which ones? He got both.

50. X Q. When?

A. The first ones in the same year, 1864, in the Odd Fellows' room, I guess, and I made only, I think, on the whole amount, three or four dozen of them to try an experiment with.

51. X Q. Do you know that M'r Levi put the first ones on in 1864?

A. I do; and I further know that I put some on myself.

52. X Q. Where did you put on the ones that you put on yourself?

A. In my shop, No. 34 Mechanic street, old number.

53. X Q. What did you put these on to?

A. On common frames; common bag-frames; and he put some on satchels to try them in both ways.

54. X Q. Where did you get your bag-frames that you put these on to, and who made them?

A. I could not tell you the maker. It was made in Europe. It was an old bag that I tried to experiment with. And about frames, I had different kinds, and never paid any attention to the man who made them. I suppose they were French or German frames. I remember the name of Steinmetz being marked upon it.

55. X Q. Where is that bag now?

A. I could not tell you. I have changed business several times, and, as I considered it a worthless thing, it got lost some way or another. I never thought it worth while to patent it; I mean to save it.

56. X Q. Did M'r Levi give you his opinion about them?

A. He did.

57. X Q. What did he say ?

A. Well, he thought that if it could be improved it might be worth something; but in the first state he did not seem to think so much of it at the time ; neither did I.

58. X Q. What was that ring for on that No. 2 ?

A. To enable to fasten the handle to the thing at the same time with less fixings.

289 59. X Q. Was the ring and fastening one casting ?

A. The first I soldered together, and then I had them cast in one whole piece.

60. X Q. Did you have the originals before you when you made these drawings, or did you make them from memory ?

A. From memory.

61. X Q. How long have you known the defendants, Edward Simon & Brothers ?

A. Since about 1862 or 1863.

62. X Q. Have you had conversations with them relative to this during the past year ?

A. I had conversation with M'r Levi about it, and with M'r Simon, too.

63. X Q. How long age ?

A. I guess about three months with one of them.

64. X Q. You have known what the suit was about, hav'n't you ; that it was about Roemer's bag-catch ?

A. I did not exactly know whether it was about this catch or the fastening until lately. If I had known it I would have fought the matter myself.

And being further examined by M'r Betts, he says :

65. Re-D. How long after making the first catch did you make the second ?

A. Within a half year.

66. Re-D. Did you make the second invention in 1864 or 1865 ?

A. It was between the years, I think ; either the end of December or the beginning of January.

67. Re-D. When did you last see the model from which you made the drawings ?

A. About a year or two after. I don't understand the question.

68. Re-D. When did you last see the catch from the memory of which you drew the exhibit 23 ?

A. Last night. I accidentally left it in my other coat pocket this morning.

69. Re-D. You made the drawing only because you forgot the catch ?
(Objected to as leading.)

A. That is all.

70. Re-D. Why did you make the drawing ?

A. Because I forgot the models. I left them in my other coat. I was on the way to Newark back again to get them, even this morning, and happened to miss the train.

71. Re-D. You are sure that the drawing is correct ?

A. I am.

72. Re-X. The No. 2 is your improvement, is it ?

A. It is.

73. Re-X. After No. 1 ?

A. Yes.

F. L. HILBRECHT.

Subscribed and sworn to before me this 19th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

LEWIS SCHNEIDER, a witness of lawful age, produced on the part of the defendants, having been by me first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, in the matter of controversy herein, and being examined by M'r Betts, deposes and says as follows:

1. Q. What is your name, age, and occupation?

A. My name is Lewis Schneider. I am 26 years old. I reside
290 at No. 26 William street, Newark, N. J. I am a tool-maker.

2. Q. How long have you known M'r Lewis Hilbrecht?

A. I think about eight years.

3. Q. What connection have you had with him?

A. I was employed with him as apprentice.

4. Q. At what time, and for how long, were you employed with him?

A. I was employed with him about 1864; I could not say how long. I could not say how long he was in the business after that.

5. Q. State, as near as you can, how long you were employed with him.

A. I think somewhere in the neighborhood of three years.

6. Q. At what where you engaged during that time?

A. I was apprenticed to learn tool-making; I was not exactly bound; I was there to learn my trade as a press-tool maker.

7. Q. While with M'r Hilbrecht, did you see fastenings for bags like those of which Exhibit 23 is a drawing?

A. I saw them in the shop where I was employed.

8. Q. Did you ever make any?

A. No, sir.

9. Q. Did you make tools to make them with?

A. I think I made a tool for the brass part here; the flat part; the fastening part; a press tool.

10. Q. You knew that bag-catches similiar to Exhibit 23 were made in the Hilbrecht's shop, while you were there?

A. Yes, sir.

11. Q. Did you make any part of the catches; the loop, for instance?

A. No, sir; only tools.

12. Q. Have you seen the tools for making the catches, of late?

A. I have seen the tools this morning that cut out the brass part, the fastening part, and have cut one on it.

13. Q. Produce the fastening cut from the original tool.

(Witness produces a brass piece, which is marked "Defendants' Exhibit 25.")

14. Q. Is the loop, Exhibit 25, similar in all respects to these used by M'r Hilbrecht?

(Objected to.)

A. I believe it is; there were but very few made of my recollection, of my knowledge. I could not say whether there were many or few.

15. Q. Is the fastening, Exhibit 25, now finished?

A. No, sir.

16. Q. What further work should be done on it in order to make it like those used by M'r Hilbrecht?

A. It should be raised in the centre for the loop to pass through and be fastened under.

17. Q. For what purpose were these loops made ?

A. I could not positively say whether they were made for anything else or not, or whether they were used for anything else.

18. Q. You know that they were made for fastening the catches on traveling-bags ?

(Objected to as leading.)

A. Yes, sir.

19. Q. Have you seen any other kind of loop made at the shop of M'r Hilbrecht ?

A. I have seen the model of the other one ; the one that was made of wire ; the improvement, that is.

20. Q. Have seen a different style of brass loop, or model of such loop ?

291 A. No, sir.

M'r Marshall states as follows :

The witness having been produced for the purpose of introducing matters not pertinent to the rebuttal testimony of the defendants, he shall only cross-examine him, subject to the ruling of the court, as to the admissibility of his testimony, in answer to defendants' questions :

21. X Q. Can you swear that this Exhibit 25 was made for the purpose of holding catches to traveling-bags ?

A. I could not swear that it was the only purpose that it was used for.

22. X Q. How many catches did you see in the shop of M'r Hilbrecht ?

A. I could not exactly say how many ; it was out of my line of business, making them. I only made tools.

23. X Q. Were they on or off of bags ?

A. Off the bags.

24. X Q. When was it that you saw them ?

A. I think it was in the latter part of 1864, or say part of 1865.

25. X Q. Can you swear positively to this ?

A. I can swear to 1865, certain.

26. X Q. When was your attention first drawn to the matter in this suit ?

A. Yesterday afternoon.

27. X Q. Could you have gone on and described what you saw without having had the models you speak of shown you ?

A. No, sir ; I had forgotten all about that being a bag at the time. It had slipped my memory.

A. I could not swear that it was used for.

28. X Q. Are you working on your own account now, or for some one else ?

A. For some one else ; for Reynolds & Zahn, Newark, N. J.

29. X Q. Have you ever been engaged in making traveling-bags ?

A. No, sir ; nothing but tool-making.

And being further examined by M'r Betts, he says :

30. R. D. At the time the catches were made, what purpose did you ever hear the loops being applied to ?

A. I could not say for certain, because it was not my business to ask ; I got my orders, and I made my tools according to pattern.

31. R. D. What purpose did you suppose they were applied to ?

A. For carpet-bags ; I never saw one on a frame.

(Supposition objected to.)

32. R. D. Did you know of any purpose for which M'r Hilbrecht used the catches or loops ?

A. I have never seen them together; always in single parts, whenever I have seen them. I could not say whether they were exactly made for that purpose or not.

33. R. D. You have seen both catches and loops in his shop?

A. Yes, sir.

And being further cross-examined by M'r Marshall, he says:

34. Re-X. How many did you see?

A. I could not say.

35. Re-X. How many catches did you see?

A. I think I have seen a couple of dozen of the first pattern.

36. Re-X. Can you swear, of your own knowledge, that they were precisely like that drawing, No. 1 on Exhibit 23?

A. I think it was very near the thing that I have seen.

37. Re-X. Can you swear, of your own knowledge, that they were precisely like that drawing?

292 A. That has slipped my memory—whether it is exact or no. It is very near the same thing—the same purpose.

38. Re-X. But you can't swear that it is exactly the same?

A. I could not say exactly.

And being further examined by M'r Betts, he says:

39. R. D. You can swear that they were substantially the same as the drawing?

A. No, sir; not exactly as the drawing.

40. R. D. Were they of the same general design of a catch and loop?

A. This thing here is a little different from the drawing, (indicating Exhibit 25.)

LOUIS SCHNEIDER.

Subscribed and sworn to before me this 19th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

CHARLES DEHNER, a witness, of lawful age, produced on the part of the defendants, having been by me first duly cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, on the matter of controversy herein, and being examined by M'r Betts, deposes and says as follows:

1. Q. What is your name age, residence, and occupation?

A. My name is Charles Dehner. I am thirty-three years old. I reside at Newark, N. J. I am a machinest.

2. Q. How long have you known M'r Hilbrecht?

A. Since 1865.

3. Q. What connection have you had with him?

A. None.

4. Q. Under what circumstances did you know him?

A. I bought his business.

5. Q. At what time did you buy his business?

A. In 1867.

6. Q. Look at the Exhibit 23, and state whether you found in his possession at that time and came into possession of any fastenings for bags similar to those described in the drawings.

A. I came into possession of one or two. There were quite a lot when I entered the shop.

7. Q. About how large a quantity?

A. About from thirty to forty pounds, and I sold them for old brass.

8. Q. Have you ever seen any catches for bags similar to those shown on Exhibit 23? State how long ago, and where.

A. Yes, sir. It was in the spring of 1866, in M'r Levi's shop in Newark.

9. Q. Were these the first catches for bags that you ever saw of that kind?

A. No, I saw some before.

10. Q. State when and where.

A. I think it was at the exhibition in London in 1862.

11. Q. Describe the catches you saw there.

A. I can't describe them so well. They were pretty near like this, (indicating No. 1 in Exhibit 2 ,) but more fancy.

12. Q. Do you know the plaintiff in this suit, M'r Roemer?

A. Yes.

13. Q. How long have you known him?

293 A. Since 1866.

14. Q. What is his reputation for truth and veracity?

A. I don't know anything about his reputation. In regard to patents, I heard sometimes that he is very sharp after new ideas to get a patent out of them.

(Objected to as to last part as irresponsive.)

15. Q. Explain what you mean.

A. I know from my own experience, because M'r Roemer came sometimes to my place; and then I heard it from different parties that he took out patents on articles which had been used before in the old country.

16. Q. If you heard that M'r Roemer had taken out a patent and had sworn that he was the inventor, would you believe him?

A. I heard something like it.

17. Q. With what you know of M'r Roemer's reputation for truthfulness and his general operations in taking out patents, would you believe him under oath?

A. In one way not.

18. Q. Explain in what way.

A. Because I seen some articles here he took out a patent for which I *I* have seen before.

19. Q. You believe that his operation in that case was not honorable?

(Objected to as leading.)

A. I do.

20. Q. What do you think of his operation in that case?

(Objected to as to what the witness thinks.)

A. I don't think much of it.

21. Q. From what you know of that operation and his general character in patent matters, would you believe him under oath?

(Objected to, as witness has been exhausted on that subject.)

A. Not on patent matters.

22. Q. Have you any personal ill-feeling towards M'r Roemer?

A. No, sir.

(Counsel for plaintiff objects to all the testimony offered by counsel through this witness as not pertinent to the rebuttal of evidence heretofore given in the case, and will only cross-examine witness on such evidence, subject to the ruling of the court as to his testimony's being stricken out on all points not pertinent to the rebuttal.)

23. X Q. How long have you been in Newark?

A. Since 1867.

24. X Q. Where were you previous to coming to Newark?

A. In New York.

25. X Q. Then you first went to Newark to live in 1867?

A. When I gave up my business in Jersey City. I went to Newark from Jersey City.

26. X Q. What part of 1867 was this?

A. The fall.

27. X Q. Did you go to work for yourself when you went to Newark or for somebody else?

A. For myself.

28. X Q. What did you go to doing for yourself at Newark?

A. I manufactured ornaments for the trunk and bag business.

29. X Q. Did you ever work for anybody in Newark before you went into business for yourself?

A. No, sir.

294 30. X Q. Have you since?

A. After I gave up my business.

31. X Q. Did you ever work for James H. White, of Newark?

A. Yes; I did.

32. X Q. When?

A. It was in 1869; from February until July, 1869.

33. X Q. Did you ever work for him before that time?

A. No; I never knew him before.

34. X Q. What place in Newark, street and number, did you commence working at for yourself?

A. I commenced at No. 14 Mechanic street.

35. X Q. Did you see any of those catches on bags in Hilbrecht's shop when you bought him out?

A. Not on bags; on frames.

36. X Q. You sold what you found there for old brass, did you?

A. What I found of those catches.

37. X Q. What particular persons did you hear say that M'r Roemer took out patents on articles which had been used before in the old country? Give their names and where they live.

A. A man by the name of Sieben, who had been manufacturing those articles in Germany and who worked with me at James White's, and a man by the name of Rihlman.

38. X Q. Where is M'r Sieben now?

A. I heard lately that he died; I have not seen him for the last two or three years, at least.

39. X Q. Do you know anything of your own personal knowledge of M'r Roemer whereby you could disbelieve him under oath?

A. No.

40. X Q. Where was your native place?

A. Bavaria.

41. X Q. How long have you been in the United States?

A. Since 1864.

And being further examined by M'r Betts, says:

42. X Q. On what kind of frames did you see the catches in Mr. Hilbrecht's shop?

A. Two satchel-frames.

And being further cross-examined by M'r Marshall, he says:

43. Re-X. When did you buy M'r Hilbrecht out?

A. In 1867; in the winter; I opened the place in 1868; in January, about.

44. Re-X. Then it was in December, 1867, that you bought him out? A. Yes, sir.

CHARLES DEHNER.

Subscribed and sworn to before me this 19th day of March, 1873.

JOSEPH GUTMAN, J'R,
Examiner.

295 *Order for the issue of a commission to London, Eng.*

Circuit court of the United States, district of New Jersey.

WILLIAM ROEMER
vs.
EDWARD SIMON ET AL.

A motion having been made for a commission to take the evidence of Moritz Wolfski and M'r Fisher, at London, England, after hearing counsel for respective parties, ordered that William D. Freshfield, esq., No. 5 Bank Building, London, be, and hereby is, appointed commissioner, & a commission issue to him to take the evidence of said persons upon the interrogatories & cross-interrogatories filed in this court, and this day settled.

JNO. T. NIXON, *J.*

296 *Commission.*

The President of the United States to William D. Freshfield, esq., No. 5 Bank Building, London, E. C., England, greeting:

Know ye that we, in confidence of your prudence and fidelity, have appointed you commissioner, and by these presents do give you full power and authority diligently to examine upon their respective corporal oaths, (or affirmations,) before you to be taken, Moritz Wolfski, now or late of No. 5 Pilgrim st., Ludgate Hill, London, England, and also M'r Fisher, now or late of No. 188 Strand, London, as witnesses in a cause now pending and undetermined in equity in the circuit court of the United States of America for the district of New Jersey, wherein William Roemer is complainant and Edward Simon, Samuel Simon, William Simon, and Morris Schwerin are defendants, on the part of the defendants, on the interrogatories hereunto annexed and touching the premises.

297 And we do hereby require you, before whom such testimony may be taken, to reduce the same to writing, and to close it up under your hand and seal, directed to the clerk of the circuit court of the United States of America for the district of New Jersey, at Trenton, New Jersey, United States; and that you return the same when executed as above directed, annexed to this writ, with the title of the cause endorsed on the envelope of the commission, into the said circuit court before the judges thereof, with all convenient speed, such return to be made by mail.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the *Supreme Court of the* United States, at the city of Trenton, New Jersey, United States, in said district, this fourteenth day of February, in the year of our Lord one thousand eight hundred and seventy-three.

[L. S.] S. D. OLIPHANT, *Clerk.*

WHITNEY & BETTS,
Sol'rs for Defendants.

FREDERIC H. BETTS,
Counsel.

298 *Interrogatories to be addressed to Moritz Wolfski, No. 5 Pilgrim st., Ludgate Hill, London.*

1. What is your name, age, residence, and occupation?

2. How long have you been in trunk & bag business?

3. Did you ever have in your employ in the bag business any persons by the name of William Roemer or Samuel Phillips? If so, give the dates (by reference to your books, if possible) when each of said persons worked in your employ.

4. Look at the drawing attached to this commission, marked "William Roemer's improvement in travelling bags, valises, &c., patented July 31st, 1866," and state whether or not, during the period that William Roemer and Samuel Phillips worked for you (or either of them) you used in your business any bags having catches applied thereto like the catches
299 shown in said drawing; if so, state fully and particularly the construction and operation of any such catches so used by you; state from whom you obtained the same; whether they were used in large or small quantities. Annex samples of all such catches to your deposition and state how many of such catches were applied to each frame, and to what part of the frame.

5. Did William Roemer know of the use by you of the catches referred to at the time mentioned, or would it be possible, from the nature of his employment, that he could fail to know of the same?

6. Did you ever have more than one person named William Roemer in your employment?

7. Do you know, or can you set forth, any other matter or thing which may be a benefit or advantage to the parties at issue in this
300 cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause?

If yea, set forth the same fully and at large in your answer.

Interrogatories to be addressed to Mr Fisher, now or late of No. 188 Strand, London.

1. What is your name, age, residence, and occupation?

2. How long have you been in the trunk or bag business?

3. Did you ever, prior to the year 1866, publish and print any business catalogues containing cuts or pictures of travelling-bags and of the fastenings thereof?

4. If you shall say you did publish such business catalogues,
301 produce samples of all such catalogues as were published by you prior to 1866, and state in what year each of said samples were published.

5. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

302 *Cross interrogatories on the part of the plaintiff, to be put to Moritz Wolfski.*

1. If you state in your answer to the 3rd interrogatory that such persons as William Roemer and Samuel Phillips were in your employ, state at what dates each entered and at what dates each left your employ, and also state in what particular department of your business they each

were employed, and what was the nature of their work and the reason why Samuel Phillips left your employ.

2. Was there ever more than one man by the name of Roemer in your employ between the years 1861 and 1865? If yea, state his other name and when he entered and when he left your employ.

3. If you annex samples of bag-catches to your deposition, state when such particular samples were made, by whom, where, and 303 at whose request they were made.

4. If you answer yea to the 5th direct interrogatory, state your reasons for your belief that William Roemer knew of the existence of such catches or fastenings.

Cross-interrogatories to be put to M'r Fisher on the part of the plaintiff.

1st. If you shall annex samples of catalogues in answer to the 4th direct interrogatory, please state the exact date of the publication or printing of the particular one or ones you annex to your deposition, whether or not every part and every page thereof, drawings, plates, pictures, and descriptions, and every word was printed at that time you name. Also state who was the printer who printed it or them, his name or the firm-name, street, and number of street of his or their place of business at that time, and their present place of business and 304 residence; also state the number of such catalogues you caused to be printed, and what your own occupation was then and what it has been since, and what it now is.

The within interrogatories & cross-interrogatories submitted, examined, & approved this 14th day of February, anno Domini 1873.

JNO. T. NIXON, *J.*

305 Depositions of witnesses produced, sworn, and examined the twenty-fifth day of March, in the year one thousand eight hundred and seventy-three, at No. 5 Bank Building, in the city of London, under and by virtue of a commission issued out of the circuit court of the United States of America for the district of New Jersey, in a certain cause therein depending and at issue between William Roemer, complainant, and Edward Simon, Samuel Simon, and William Simon, and Morris Schwerin, defendants, as follows:

SAMUEL FISHER, of 188 Strand, in the county ot Middlesex, bagmaker, aged sixty years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the defendants, doth depose and say as follows:

First. To the first interrogatory he saith: My name is Samuel Fisher; I am about sixty years of age; my residence is 188 Strand, London, and I am a dressing-bag and portmanteau maker.

306 Second. To the second interrogatory he saith: I have been above 20 years in the said business.

Third. To the third interrogatory he saith: Yes.

Fourth. To the fourth interrogatory he saith: I have no samples of business catalogues published by me prior to the year one thousand eight hundred and sixty-six, except the one annexed to this deposition, as the several editions; with that exception, are all exhausted. None of the said catalogues were dated, and I am unable to answer in what year the said sample was published.

Fifth. To the fifth interrogatory he saith: The fastening or catch described in the drawing attached to this commission, and marked "Will-

iam Roemer's improvements in travelling-bags, valises, &c., patented July thirty-first, one thousand eight hundred and sixty-six," was, I believe, invented by a person named Marx, of London, and was manufactured by him before the year one thousand eight hundred and
307 sixty-one. Before that date I frequently purchased bags with the fastening or catch referred to of him, he having given me to understand that the said invention was protected by registration up to the year one thousand eight hundred and sixty-one. After that date, both before and after the year one thousand eight hundred and sixty-six, I have manufactured and sold bags with the said fastening or catch.

First. To the first cross interrogatory he saith: I am unable to give the date of the catalogue annexed to this deposition, but I believe that every part and every page thereof, drawings, plates, pictures, and descriptions, and every word were printed at the same time. The printers who printed it were Mess'rs A. Shaker and Sons, of 80 Bishopsgate street, within London, and they still carry on business at that address. I had about five thousand copies of each edition of my business
308 catalogues printed. My occupation at the date when the said annexed catalogue was printed was and since has been and now is that of a dressing-bag and portmanteau maker.

SAM'L FISHER.

Examination taken, reduced to writing, and by the witness subscribed and sworn to, pursuant to foregoing instructions, this twenty-fifth day of March, one thousand eight hundred and seventy-three, before

WILLIAM D. FRESHFIELD,
Commissioner.

309 U. S. circuit court, district of New Jersey. In equity.

WILLIAM ROEMER
vs.
EDWARD SIMON ET AL.

The bill is filed in this case for an alleged infringement of letters-patent granted to the complainant, July 31, 1866, for "improvement in travelling-bags."

The defendants, in their answer, aver that the complainant is not the original and first inventor of the improvements claimed; that it has been previously in use and was known to a large number of persons named; that a knowledge of the invention has been acquired by the complainant abroad, and that he had surreptitiously and unjustly obtained said patent here; and that it had been described in a printed publication by one Samuel Fisher, in London, prior to the supposed invention thereof by complainant.

The testimony in the case is conflicting and in many respects
310 unsatisfactory, especially that of the complainant, the defendants, & several of their employees. I have been unable to reconcile many of their statements of facts and circumstances, & am obliged to conclude that they have allowed their interests or their feelings to warp their judgement, & to distrust the accuracy of their recollections. Viewing much of the evidence in this light & the affirmative being upon the defendants, I think they have failed to establish all their defences, except the one alleging a prior public use of the invention, & I proceed to examine the proofs & the law upon that point.

The proofs may be properly considered under the two heads of (1) foreign & (2) domestic prior use; in regard to the foreign prior use a number of witnesses, undoubtedly, testify that travelling-bags, having fastenings upon them like the complainant's patent, were largly manufactured & used abroad, & were sent to this country, & exhibited for sale in the public market.

A commission was taken out by the defendants for the examination of M'r Samuel Fisher, a dressing-bag-maker residing in London,
311 & to it was annexed a copy of the drawing accompanying &
illustrating the patent of the complainant, & which clearly revealed the character of the invention claimed. M'r Fisher examined the said drawing, and in answer to the 5th interrogatory says:

"The fastening or catch described in the drawing attached to this commission, and marked 'William Ro'mer's improvement in travelling-bags, valieses, &c., patented July 31, 1866,' was, I believe, invented by a person named Marx, of London, & was manufactured by him before the year 1861. Before that date I frequently purchased bags with the fastening or catch referred to, of him, he having given me to understand that the said invention was protected by registration up to the the year 1861. After that date, both before and after the year 1861, I have manufactured & sold the said fastening or catch." Oscar Ditzes, a satchel-maker who came to this country in April, 1869, testifies that in 1863 he worked in Cologne, on bags having catches or fasten-
312 ings on them like those described in Ro'mer's patent; that pre-
vious to this, in 1862, he was with the complainant, in the employ of Brothers, in London, and whilst there saw many of such catches at Keller & Bertram's, No. 28 Remsen st., & at Schaffer Brothers; that they were the invention of a German, whose name & place of business he does not remember, & that two of them were attached on the top of the frame of each travelling-bag, in the mode exhibited in the drawing of the complainant's patent. Henry I. Sayers, of the firm of H. I. Sayers & Co., of New York, says that previous to 1866 he was connected with the firm of Calhoun & Robbins & had particular charge of the bag-department; that he frequently saw upon bags imported from Paris catches or fastenings to the jaws of the bag, constructed & arranged upon the same general idea of those of the defendant's Exhibit No. 17, to wit, two or more saddles or brass pieces on the top and sides of the frame, with the two ends turned down & holding together the jaws of the satchel.

313 Henry S. Doxsey, salesman for H. I. Sayers & Co., and formerly
his fellow-clerk at Calhoun & Robbins, states that the last-named firm moved from 26 & 28 Vesey street to No. 410 Broadway, January 1, 1866; that before the removal, in the fall of 1865, he recollects seeing these on sale, imported French travelling-bags, with two catches fastened to the top of the frame; that the clamp was attached to the frame by a plate, & closed over the jaws of the bag; & that they only differed from the catches on the frame, Exhibit No. 17, in the manner of their finish.

Thomas Walter Griffith, now a resident of Newark, New Jersey, & formerly of Canada, defendants' Ex. No. 14 being shown to him, testifies that he first saw such catches or fastenings upon a bag in the possession of one Benedict, travelling from Niagara Falls to Toronto, in 1854 or 1855; that his mind was so much impressed with the utility of the contrivance for fastening the jaws of travelling-bags, and especially for preventing the sides from bulging out, that afterwards on purchasing a bag
314 in London in 1858 he had such catches placed upon the frame; that
he used the bag with the catches for eight or ten years, visiting the

United States with it more than a dozen times, while he owned it, & generally stopping at the 5th Avenue Hotel, in New York; that he has frequently seen them upon the bags of English officers, stationed in Canada; & that the catch he had & saw was precisely like the def'ts' Ex. No. 14, except that the clamp turned all the way round, under the plate, & did not have the small knob on this exhibit which prevented such turning.

Carl Frederick Sperling, having made & affixed to the jaws of a travelling-bag frame a catch similar in all respects to complainant's patent, & marked "Def'ts' Ex. 10," says that he came to this country in April, 1866; that he worked at bag-making in London from August, 1863, to about March, 1866; that whilst in London he applied to travelling-bags catches or fastening like Ex. 10; that such catches were in use in London at that time & were on sale in the market; & that he pur-
315 chased them there at a shilling a pair, but did not largely use
them, on account of the price.

There was no contradiction of these witnesses, & their evidence seems to establish the defendants' proposition that there was a foreign prior use of the improvement described & claimed in *in* the complainant's patent.

2. In reference to the knowledge & public use of the invention in this country, in addition to the testimony aforesaid of Sayers & Doxsey, the attention of the court has been particularly directed to the evidence of John Hill & Edward Taylor.

Hill was a trunk-maker & carried on the business from 1849 to 1857, at the corner of Broadway & Warren street, New York; and from 1857 to 1860, at the corner of Broadway & 10th street, and afterwards worked for Stillings, on Broadway, from 1863 to 1867. A bag marked Defendants' Ex. 2, & having a catch or fastening embracing all the features of the complainant's patent, being shown to this witness, he says that he made and applied to travelling-bags just such catches while
316 he was in business at the corner of 10th st. & Broadway, & also
while he was at Stillings'; that bags would be brought in for repairs, & he would put upon the frames sometimes one & sometimes two of these catches or fastenings, instead of straps & buckles, to hold the jaws of the bag together, & that he made them out of a buckle, when he had one that fitted the frame, and when not, out of a piece of wire. He speaks of the application of such catches as of frequent occurrence, but has no recollection of using them before his removal from Broadway & Warren street.

Taylor was his apprentice from 1850 to 1857, whilst he was at the corner of Broadway & Warren, and worked for him from 1857 to 1860, at 10th & Broadway. He testifies that whilst in M'r Hill's employ, from 1850 to 1857, at Broadway & Warren, he often repaired travelling-bags & put catch on them to hold the jaws together; that he would cut a buckle in two so as to make a fastening for each end, & attach it to the top of the frame with a piece of brass wire, if he had no buckle to suit; that
317 when the bags had no fastenings he would put on two or three
catches, "one at each end and right on the top of the frame;" that before their removal to Broadway & 10th street, the first which he remembers of applying was upon a black-leather bag sent to be repaired by a gentleman from the Irving House; that, in that case he made the catches out of iron wire, & applied them on top of the frame, the same as the defendants' exhibit.

2. That the work then, & at other times, was done under the directions of M'r Hill, and was of more frequent occurrence after their

removal to 10th & Broadway, because they did more general jobbing there.

Both of these witnesses also speak of often seeing at that time foreign-made bags, with the jaws held together with catches, attached to the frame, & acting in the same manner as the catches of the complainant's patent. If they speak the truth—& there was no attempt made
to impeach the accuracy of their statements—there is no reason-
318 able doubt that the patented improvement of the complainant was
known & in public use in the United States for several years prior
to his application for a patent.

This suit was commenced in 1872. The provisions of the patent act of July 8, 1870, apply to it, & the 24' section of that act provides that any person who has invented or discovered any new & useful art, machine, &c., or any new & useful improvement thereof, not known or used by others in this country & not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof, & not in public use or on sale for more than two years prior to his application, unless the same is proved to have been abandoned, may, upon payment of the duty, &c., obtain a patent therefor.

One of the special defences given in the 61st section is "that the plaintiff is not the original & just inventor of any material & substantial
part of the thing patented," but in order that the defendant may
319 have the benefit of such a defence, he must give notice to the
plaintiff in the answer filed of the names & residences of the persons having the prior knowledge of the invention, & where & by whom it had been used. (16 Stat., 208.)

The 62nd section further enacts that whenever it shall appear that the patentee, at the time of making his application for the patent, believed himself to be the original & first inventor of the thing patented, the same shall not be held to be void on account of the invention, or any part thereof, having been known or used in a foreign country before his invention, if it had not been patented or described in a printed publication.

There is no evidence in the case showing that the invention has been patented abroad or described in any printed publication; nor do I find any satisfactory proof that the patentee at the time of his application did not believe himself to be the original & first inventor of the thing patented.

The provisions of the last-named section dispose of all the evi-
320 dence of the defendants which was introduced to prove the knowl-
edge & use of the invention in foreign countries, & leave for the consideration of the court the single question whether there was such a knowledge & public use of the thing patented in the United States previous to the date of the complainant's application as to avoid his patent.

Thirteen persons or firms were named in the defendants' answer as having known or used here the invention of the complainant before 1866. Of the whole number only the two defendants, Edward & William Simon, & John Hill, Edward Taylor, & Thomas Walter Griffith were called as witnesses upon this point. I have attached weight only to the testimony of the three last named, & to Henry P. Sayers & Henry S. Doxsey. It does not appear that the complainant had previous notice of the examination of Sayers & Doxsey, & if his solicitor had objected to their being sworn upon the ground of the lack of notice, the objection would have been sustained, & no consideration would have been

321 given to their evidence. (Blanchard vs. Putnam, 8 Wall., 420; Roberts vs. Blake, 111 Off. Gaz., 268.) But no such objection was made in their case, & it is a familiar principle that the failure to interpose it when the witness is offered before the examination is a waiver of the notice, & that it is too late, after acquiescing in the admission of the testimony & after cross-examination, to object to the evidence for the want of notice. (Brown vs. Hall, 6 Black, 401.)

It must be borne in mind that it is not necessary to hold, in order to avoid the patent, that the complainant knew of the prior existence & use of his invention. He must not only believe himself to be, but he must be, both an original & the first inventor. If he acquires his knowledge of the invention from another he is not the original inventor, & if another has anticipated him without his knowledge he is not the first inventor.

After a most careful examination of the testimony of Hill, Taylor, Griffith, Sayers, & Doxsey, & after reasonable allowance for the 322 imperfections of human memory—giving such examination, & making such allowance, from a strong predisposition in favor of the validity of the Roemer patent, arising from the adjudication of this court in the case of the same complainant against Samuel Logowitz et al., in which the patent was sustained—it seems impossible to doubt that the device of the complainant for fastening together the jaws of satchels & travelling-bags was known & used in this country for many years before the patentee claims to have made his invention, and that its use was not a single experiment by an inventor who afterwards abandoned it from its supposed unutility, but was so frequently applied to & used upon travelling-bags as to invest the public with the rights to use the device, notwithstanding the patent.

The evidence sustains the defence of want of novelty & prior use, & there must be a decree for the defendants.

323 *Final decree.—Filed May 12, 1874.*

At a stated term of the circuit court of the United States, held in and for the district of New Jersey, at the court-house in the city of Trenton, on the 12th day of May, 1874.

Present, the honorable John T. Mixon, J.

William Roemer, complainant,
vs.
Edward Simon, William Simon, Samuel
Simon, & Morris Schwerin, defendants.

This cause having come on to be heard in due course at a stated term of this court, after hearing counsel for the respective parties and due deliberation had, it is ordered, adjudged, and decreed that the answer of the defendants be amended nunc pro tunc, as of the day of filing the same, by inserting the following allegation:

324 And the respondents further answering say that the said letters-patent, and each and every part thereof, are void and of no effect in law, because the alleged invention or discovery of said William Roemer had been previous to his alleged invention or discovery thereof known to and used by Henry J. Sayres and Henry S. Doxsey at the city of New York, said Doxsey now residing in the city of Brooklyn, and said Sayres now residing in the city of New York, & both doing business at No. 26 Walker st., in said city of New York, and also by Oscar

Ditzes, at London, England, who now reside' in the city of Philadelphia, and also by Albert Jenck, of and at the city of New York, and at Paris, France, and by J. R. Davis, of the city of New York, at the city of Boston, Massachusetts.

And be it further ordered, adjudged, and decreed that the bill of
complaint herein be, and the same hereby is, dismissed, and
325 that the defendants do recover of the complainant their costs and
disbursements, as adjusted by the clerk of this court, amounting
to the sum of four hundred and eighty-seven $\frac{35}{100}$ dollars, and have execution or other process therefor, pursuant to law.

Dated May 12, 1874.

JNO. T. NIXON, *J.*

CITY & COUNTY OF NEW YORK, *ss:*

James McMahon, being duly sworn, says he is clerk for defendants' att'ys herein, and that on the 25th day of April, 1874, he served the papers hereto annexed on Johnathan Marshall, att'y for the pl'ff herein, by delivering a copy of the same to him personally at his office, No. 247 Broadway, New York, and leaving the same with him.

Sworn to before me this 25th day of April, 1874.

T. J. MACNEY,
Notary Public, N. Y. City & Co.

326 *Petition of appeal.—Filed July* 11, 1874.

Circuit court of the United States, district of New Jersey, within the third circuit.

WILLIAM ROEMER, COMPLAINANT AND APPELLANT,
vs.
EDWARD SIMON, SAMUEL SIMON, WILLIAM SIMON, and Morris Schwerin, defendants and respondents.
} In equity.

To the honorable the Supreme Court of the United States:

The appeal of William Roemer, the above-named complainant and appellant, respectfully showeth:

That upon the 26th day of March, A. D. 1872, the above-named complainant filed his bill of complaint in the circuit court of the United
States for the district of New Jersey, in the third circuit, against
327 the above-named Edward Simon, William Simon, Samuel Simon,
and Morris Schwerin, in a suit in equity to enjoin and restrain
the said Edward Simon, Samuel Simon, William Simon, and Morris Schwerin from infringing certain letters-patent of the United States issued to and owned by the said William Roemer, and praying for an accounting and payment by the said defendants of the profits by them realized, and of the damages suffered by the said William Roemer, complainant and appellant, by reason of said alleged infringement of said letters-patent, and that a subpœna ad respondendum issue' out of and under the seal of said circuit court was duly served on said defendants.

That the said defendants filed their answer to said bill of complaint, and the said complainant replied thereto, and issue being thus joined, that thereupon such proceedings were had in the said cause that on the 21st day of April, 1874, a final decree was entered in said circuit court, wherein it was in substance adjudged and decreed that the said 328 bill of complaint be dismissed with costs, which said decree is, as this appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said circuit court to the Supreme Court of the United States, and respectfully prays that the said decree of said circuit court, together with the bill of complaint, answer, replication, pleadings, depositions, evidence, and proceedings in said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the said circuit court, and every part thereof, may be reversed, or such other decree made as to the said Supreme Court shall seem just.

Dated July 11, 1874.

JNO. T. NIXON, *J.*

W'M L. DAYTON,
Solicitor and of Counsel for Appellant.
JONATHAN MARSHALL,
of Counsel.

(Endorsed:)
I allow the within appeal. July 11, 1874.

JNO. T. NIXON, *J.*

329 *Bond for costs on appeal.*

Circuit court of the United States of America for the district of New Jersey, in the third circuit. In equity.

WILLIAM ROEMER, COMPLAINANT, APPELLANT,
vs.
EDWARD SIMON, WILLIAM SIMON, SAMUEL Simon, and Moritz Schwerin, defendants, respondents.
} Bond for costs.

Know all men by these presents that we, William Roemer and John Dwyer and Ebenezer A. Smith, of the city of Newark, New Jersey, are held and firmly bound unto the above-named defendants, respondents, in the sum of one thousand dollars, to be paid to the said defendants, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the nineteenth day of June, in the year of our Lord one thousand eight hundred and seventy-five.

330 Whereas the above-named William Roemer has prosecuted, or is about to prosecute, an appeal to the Supreme Court of the United States to reverse the judgment and decree rendered in the above-entitled suit by the judge of the circuit court of the United States for the district of New Jersey:

Now, therefore, the condition of this obligation is such that if the above-named William Roemer shall prosecute said appeal to effect and answer all damages and costs, if he fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

WILLIAM ROEMER. [L. S.]
JOHN DWYER. [L. S.]
EBENEZER A. SMITH. [L. S.]

Sealed and delivered, and taken and acknowledged, this nineteenth day of June, 1874, before me, at Newark, N. J.

[L. S.] J. WHITEHEAD,
U. S. Commissioner in & for Dist. of N. J.

(Endorsed:)
Approved July 11, 1874.
JOHN T. NIXON, *J.*

UNITED STATES OF AMERICA,
331 *District of New Jersey, ss:*

John Dwyer and Ebenezer A. Smith, being duly sworn, each do severally depose and say that they are citizens of the United States, residing in the city of Newark, in the State of New Jersey, and that he is a freeholder in said State; that he is worth the sum of two thousand dollars over and above all his just debts and liabilities.

JOHN DWYER.
EBENEZER A. SMITH.

Sworn to this nineteenth day of June, A. D. 1874, before me.

[L. S.] J. WHITEHEAD,
U. S. Commissioner in & for the Dist. of N. J.

(Endorsed:)
The within bond is satisfactory.
New York, June 19th, 1874.
WHITNEY & BETTS,
Respondents' Sol'rs.

332 *Citation on appeal.—Filed July* 11, 1874.

Circuit court of the United States, district of New Jersey, within the third circuit.

WILLIAM ROEMER, COMPLAINANT, APPELLANT,
vs.
EDWARD SIMON, SAMUEL SIMON, WILLIAM Simon, and Morris Schwerin, defendants, respondents.
} In equity.

By the honorable John T. Nixon, district judge in and for the district of New Jersey, within the third circuit.

To Edward Simon, Samuel Simon, William Simon, and Morris Schwerin:

Whereas William Roemer has lately appealed to the Supreme Court of the United States from a decree rendered in the circuit court of the United States for the district of New Jersey, made in favor of you, the said Edward Simon, Samuel Simon, William Simon, and
333 Morris Schwerin, and has filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court at the city of Washington on the first Monday of October next, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of Trenton, in the district of New Jersey, in the third circuit, the 11th day of July, in the year of our Lord one thousand eight hundred and seventy-four.

JNO. T. NIXON, *J.*

334 *Affidavit of service of citation on appeal and copy of appeal.*

U. S. circuit court, district of New Jersey.

WILLIAM ROEMER, COMPLAINANT, APPELLANT,
vs.
EDWARD SIMON, SAMUEL SIMON, WILLIAM Simon, and Morris Schwerin, defendants, respondents.

UNITED STATES OF AMERICA,
State of New York, City & County of New York, ss:

H. Clinton De Witt, being duly sworn, deposes and says that on the 14th day of July, 1874, at No. 64 Read street, in the city of New York, he served on Edward Simon and Samuel Simon, and at the shop of said appellees, at East Ferry street, in the city of Newark, N. J., on Morris Schwerin, appellees above named, copies of the appeal and copies 335 of the citation filed in this cause with the clerk of the circuit court in and for the district of New Jersey, by delivering a copy of said citation to each of them personally, together with a copy of said appeal, and by leaving a copy of said appeal for said appellees in the clerk's office of the circuit court aforesaid.

H. CLINTON DE WITT.

Sworn to before me this 21st day of July, 1874.

ARTEMAS B. SMITH,
Notary Public N. Y. City & Co.

336 Circuit court of the United States, district of New Jersey. In equity.

WILLIAM ROEMER
vs.
EDWARD SIMON ET AL.

It is hereby stipulated by and between counsel for the respective parties herein that the clerk of this court may, upon the order of this court to that effect, retain in his custody all models and exhibits, documentary and otherwise, that were used on the hearing of the above-entitled cause in this court, and that on notice of counsel for either party, notice being also given to the opposite counsel, said clerk shall transmit said models and exhibits, documentary and otherwise, to the clerk of the Supreme Court of the United States, to be used on the hearing on appeal in said court, and after the argument on appeal and opinion rendered said exhibits to be returned to the files of the clerk of this court.

Dated Oct. 8th, 1874.

JONATHAN MARSHALL,
Of Counsel for Compl't.
WHITNEY & BETTS,
Of Counsel for Resp'd't.

337 U. S. circuit court, district of New Jersey.

WILLIAM ROEMER
vs. In equity.
EDWARD SIMON ET AL.

On reading and filing the stipulation of counsel in this cause, hereto attached, and upon due consideration thereof—

It is hereby ordered that the clerk of this court may retain in his custody all the models and exhibits, documentary and otherwise, that were put in evidence and used upon the final hearing of the above-entitled cause in this court, until notified by counsel of either of the parties hereto to transmit the same to the clerk of the Supreme Court of the United States; and that upon such notice by counsel of either party, on proof of notice having been served upon the opposite counsel, the clerk of this court shall transmit said models and exhibits, documentary and otherwise, to the clerk of the Supreme Court of the United States, to be used upon the hearing on appeal in said court; and after the argument on appeal and opinion rendered, said exhibits to be returned to the files of the clerk of this court.

JNO. T. NIXON, *J.*

A true copy:

S. D. OLIPHANT, *Clerk.*

338 I, S. D. Oliphant, clerk of the circuit court of the United States for the district of New Jersey, do hereby certify that the foregoing is a true and correct transcript of the record and proceedings in the cause above stated.

In witness whereof I have hereto set my hand and official seal, at the city of Trenton, this sixth day of October, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] S. D. OLIPHANT, *Clerk.*

(Indorsement on cover:) No. 40. William Roemer, appellant, vs. Edward Simon, Samuel Simon, William Simon, and Morris Schwerin. New Jersey C. C. U. S. Filed 15th January, 1875.

Supreme Court of the United States.

OCTOBER TERM 1877. No. 40.

WILLIAM ROEMER,
Appellant.
vs.
EDWARD SIMON, SAMUEL SIMON,
WILLIAM SIMON & MORRIS SCHWERIN

Appeal from the Circuit Court of the United States
for the District of New Jersey.

BRIEF FOR APPELLANT.

PHILADELPHIA BAR ASSOCIATION

ARTHUR v. BRIESEN,
Of Counsel for Appellant,
No. [illegible]58 Broadway,
NEW YORK CITY.

NEW YORK,
G. LAUTER, STEAM PRINTER, 64, 66 & 68 ANN ST., COR. WILLIAM.
1877.

Supreme Court of the United States.

OCTOBER TERM, 1877.—No. 40.

William Roemer,
Appellant.
vs.
Edward Simon, Samuel Simon, William Simon, and Morris Schwerin,
Appellees.

Appeal from the Circuit Court of the United States for the District of New Jersey.

ARGUMENT FOR THE APPELLANT.

STATEMENT OF THE CASE.

This is a suit in Equity, brought by the complainant in error, against the defendants—firm of Edward Simon & Bros.—for infringement by the latter of Letters Patent granted to said complainant, Wm. Roemer, for improvement in travelling bags.

The patent, Exhibit A, bears date July 31, 1866, and is numbered 56,801. It specifies the complainant's invention to be the application of two staples, or clamps, to the frames of travelling bags, for the purpose of relieving the locks of such frames from undue strain. Each clamp is an U shaped wire secured by a metal "strap" to the top of the frame, the strap passing over the middle portion of the wire, so as to leave the legs of the clamp free to straddle the frame, and hold the same closed. By turning each clamp under the strap and bringing the legs of the clamp in line with or above the top of the frame, the latter may be opened. Two such clamps are to be applied to every frame, one at each side of the lock, at some distance therefrom. Thus applied, the clamps prevent the bag from being opened at the sides by the strain of its contents, and they also relieve the lock from strain. The bag, "complainant's Exhibit C," which is one of complainant's manufacture, fully illustrates the invention. The claim of the Patent is for:

"A frame for travelling bags, having staples J, and strap E adjusted on "the top thereof, relieving the lock from strain as described; constructed, "combined, and arranged as herein specified."

Previous to complainant's invention, the testimony shows, and the language of the patent itself implies, that devices for closing bags to relieve the lock from strain had already been in use. Such, for example, as the usual pocket-back clasp, which is riveted to one side of the bag by a rivet passing bodily through the clasp. A contrivance similar to same is illustrated in defendants' Exhibit 13, in which the strain acts on the fastening rivet, while in the complainant's clamp the strain is altogether removed from the fastening strap.

Defendants' Exhibit 13 also shows two other old modes of closing the ends of the frame, both of which require the slotting, and consequent weakening of the frame. The testimony also shows, that bags have been previously closed with leather straps and buckles attached to the frames in substantially the same manner in which trunks are also secured by straps and buckles to relieve their locks from undue strain. The advantage of complainant's invention over these old contrivances need not be further pointed out.

Suffice it to remark, that its extensive adoption by the entire travelling bag trade throughout the United States, and its universal use, which undoubtedly is known to the Court outside of the record, and of which it will, in such case, take judicial notice (Brown *et al.*, vs. Piper I Otto, page 42), sufficiently proves the importance of the invention.

The Bill of Complaint sets out and the proofs show (answers 77, 78, page 113; answers 68–71, page 93 record)) that the same complainant had occasion, in the year 1870, to prosecute one S. Lagowitz for infringement of the same patent; that upon proofs being taken, and the case being argued at length, the patent was sustained by the decision of Judge Nixon, and an injunction and decree issued against the defendant. The opinion of Judge Nixon in said case has not been reported in any known book, but it was printed in the papers submitted to this Court, with a request for admitting new testimony in this cause, which request was denied in the October Term of 1875, (1 Otto, page 149), and the attention of the Court to said decision and opinion of Judge Nixon is respectfully invited, so that the Court may satisfy itself of the thoroughness of the defence in that suit.

It further appears (answer 18, page 11) that this complainant, in the year 1869, brought a suit in the Circuit Court of the United States for the District of New Jersey, against the firm of these defendants—Edward Simon and his brothers, for infringement of the same patent here in controversy, and that,

"Before the time was set for them (the defendants) to appear at Tren-
"ton, or on the day before they ought to have appeared at Trenton,
"William Simon (one of the defendants) came to me (the complainant)
"and requested me (the complainant) to withdraw the suit as he would
"cease infringing on my patent at once—sign an agreement to that effect,
"and pay the lawyer's fee for making the agreement."—[Roemer's answer
19, page 11.]

Such an agreement was thereupon entered into and executed. It was made by the defendants' attorney (answer 66, page 14) without the aid of counsel on behalf of complainant, and was signed by complainant before he consulted his counsel (answers 20, 21 and 22, page 11; also, answer 115 to 117, page 19). The agreement itself was offered in evidence by *counsel for defendants*, and is one of defendants' Exhibits (answer 59, page 14). It is reproduced on page 19 of the record, is dated Oct. 1, 1869, and contains a recital of the facts alluded to, and a promise on the part of the defendants' firm, and their agreement, that they will not manufacture or use the said clasp, or catch, manufactured by a certain firm of Newark, New Jersey, which were the clasps at that time used by said defendants' firm. In consideration thereof, complainant agreed to withdraw, and actually did withdraw said suit (answer 58, page 14).

Notwithstanding the agreement, the defendants, three years later, again infringed upon the patent, and forced the complainant to file the bill upon which this suit is based.

The answer of the defendants denies the infringement, but no proof in aid of such denial has been given. On the contrary, they admit on page 13 of the record that they have sold at their store, prior to the filing of the bill, bags like Exhibit B, which bag clearly shows, and contains the patented features (answers 7 and 8, pages 9 and 10 of record).

The testimony of one of the defendants, Edward Simon, also shows that the style of the fastening shown on Exhibit B, which is the style here complained of, was first used by the defendants' firm on bags in the year 1867 or 1868, (Edward Simon's answer 34, page 99), and is therefore one of the styles of fastening referred to in the first bill of the complaint that was withdrawn by virtue of the agreement—Exhibit No. 7, for said agreement bears date Oct. 1, 1869. The said fastenings now used by defendants are therefore covered by the terms of said agreement.

The defendants answer further alleges prior use of the invention in England, but this, under the Statute, is not a valid defense, nor was it so considered by the Court below, in the opinion from which this appeal is taken.

The defendants further rely in their answer upon the alleged prior knowledge of the invention by fourteen witnesses, whom the answer names. Of these, but six were called, and of the six, credit was attached to three, the others being entirely and especially disregarded in the opinion of the Court below. The three witnesses to whose testimony credit was attached, are, John Hill, Edward Taylor, and T. W. Griffith. In addition to their testimony, that of two other witnesses, Henry J. Sayers, and Henry S. Doxsey, was taken on behalf of the defendants, and considered by the Court, although the answer does not name them, and although complainant's counsel objected to the admission of their testimony at the hearing, which objection is referred to in the opinion of the Court below.

The testimony of John Hill and Edward Taylor seeks to show that as early as the year 1858 these two persons had knowledge of a bag fastening similar to complainant's invention, and that they, at that time, made and placed on travelling bags clasps, or fasteners, substantially like those patented by the complainant.

The testimony of T. W. Griffith is to the effect, that in 1853 he purchased a bag in London to which he caused to be applied fasteners, substantially like those patented by the complainant, and that he used said bag during his travels in the United States prior to the year 1866.

The testimony of Sayers and Doxsey is to show that before the year 1866 (to wit, in the Fall of 1865) a certain firm with whom they were employed had in their possession travelling bags with fasteners, substantially like those described and claimed in the complainant's patent.

The complainant testifies that he conceived and made the invention first in February, 1866, (answer 10, page 10; answer 80–91, page 16).

The Court below based its decision, dismissing the Bill of Complaint only upon the testimony of the five witnesses above named, as appears from the last paragraph on page 150 of the record.

From this much of the opinion the appeal has been taken, and it is intended to invite the attention of the Court to so much only of the testimony, except, as the same may be incidentally affected by the remainder, as relates to the depositions of said five witnesses to their credibility to the substantiality of the proof adduced by them, and to the admissibility of their testimony in evidence.

ASSIGNMENT OF ERRORS.

It is believed that the Court below erred in the following particulars:

(1). In failing to consider the bearing of the agreement, Exhibit No. 7, upon this suit, and the parties thereto.

(2). In failing to consider, that where there is the least room for doubt as to the existence and public knowledge, of alleged prior devices, the *prima facie* case of the complainant and patentee cannot be overcome, and that the evidence of prior public use and knowledge relied upon for the adverse opinion of the Court below, is uncertain, contradictory, equivocal, and, at best, not such preponderating evidence as is required in order to overthrow a patented and patentable invention.

(3). In considering, at the hearing, evidence of supposed prior use and knowledge, of which no notice had been given in the defendants' answer, and to which timely objection was made at the hearing.

BRIEF.

1. THE AGREEMENT.

A patent granted to an inventor, and put in evidence, is *prima facie* evidence that the patentee was the original and first inventor of the matter set forth in his patent.

> Seymour vs. Osborn, 11 Wallace, p. 516.

This presumption is still further strengthened by an adjudication in favor of the patent in a Court of competent jurisdiction.

> "*A former judgment and decree, although against other parties raises a strong presumption that the patent is valid.*"—American Nicholson Pavmt. Co. vs. The City of Elizabeth, 4 Fisher Patent Cases, p. 191.

The *prima facie* case being thus strengthened by the existenee of a prior adjudication in favor of the patentee, the preponderating evidence usually required, before the patent can be overthrown, must necessarily become still more free from doubt; and

> "*Courts should be very tender of the rights of inventors, and not draw hasty conclusions, adverse to the validity of their rights, secured by a patent.*"—Tappan et al., vs. National Bank Note Company, 2 Fisher, p. 195.

The favorable presumption thus established is still further increased by the fact of the existence of the agreement, Exhibit No. 7. This agreement was drawn to shield the defendants from the effect of a suit brought against them in 1869 for infringement of the same patent. The very same infringing devices which are complained of in this suit were, as has already been shown, used by the defendants at and before the date of said agreement, (answer 34, page 90). The very fact of the withdrawal of the first suit, coupled with said agreement, shows an admission of infringement, and of the validity of complainant's patent, which admission, it is humbly submitted, estops the defendants from further drawing the validity of said patent in question.

It is clear, from the evidence, that the practical construction which the complainant put upon the agreement, Exhibit No. 7, was that it released the defendants from the former suit, in consideration of their promise not to infringe any more on his patent. [Roemer's answer 62, page 14].

> " *The practical construction given by parties to a contract is, in case of doubt, entitled to great weight.*"—Rubber Company vs. Goodyear, 9 Wallace, p. 799.
>
> Also, Railroad Co. vs. Trimble, 10 Wallace, p. 377.

It is clear, that the admissions contained, directly and by implication, in the agreement, Exhibit No. 7, coupled with the subsequent acts of the defendants estop them from denying the attitude which they then assumed, which attitude, it is submitted, was one acknowledging and respecting the complainant's right, by special agreement, for consideration received, even though this is not in terms, mentioned in said agreement.

> "*Admission by silence, when interwoven with acts, to put the actor in a specific attitude towards other persons, by which they are induced to do, or omit a particular thing, estops the actor from denying that he occupied such position.*"—Wharton's Law of Evidence, § 1142.
>
> " *Assumed character binds contractually, and cannot afterwards be repudiated.*"—Ib., § 1151.
>
> See also Greenleaf on Evidence, (12 Edition, Redfield), § 207 and § 208, vol. 1. " *Admissions, whether of law or of fact, which have been* ACTED UPON BY OTHERS, *are conclusive against the party making them. It makes no difference in the operation of this rule, whether the thing admitted was true or false; it being the fact that it has been acted upon that renders it conclusive.*"

The complainant was by the agreement, Exhibit No. 7, induced to, and did withdraw his first suit against the defendants; he acted therefore upon the admissions of law and of fact, therein contained.

> Also Pickert vs. Seares, 6 Adolphus & Ellis, pages 469 and 475. " *Where one by his words or conduct wilfully causes another to believe the existence of a certain state of things, and induces him to act on that belief, so as to alter his own previous position, the former is precluded from averring against the latter a different state of things.*"
>
> So also: " *An admission acted upon by an adverse party is a conclusive presumption as to the fact admitted.*"—1 Greenleaf, § 27.
>
> See also Wharton's Law of Evidence, § § 1243 and 1249.
>
> Smith vs. Fay & Co., 6 Fisher, p. 450. " *A presumption arising from silence has far more strength than any preponderance and number of witnesses.*"

If, nevertheless, the agreement in question should not be held to completely estop the defendants from denying the validity of the complainant's patent, it is clear that in view of said agreement the preponderance of evidence, necessary for the overthrow of the complainant's patent, should be such as to leave no scintilla of doubt—it should, in fact, be of such an

absolute, clear, and overwhelming character, as to justify the Court in destroying not only the patent of the complainant, but also the agreement itself, for the agreement—if the patent is void as against these defendants —is based upon no consideration on the part of the complainant, it being based upon said patent.

If the complainant's patent is invalid as against these defendants' firm of Edward Simon & Bros. the withdrawal of his former suit did not in reality endanger or affect the position of the said defendants, and did not therefore give them a consideration sufficient to warrant the execution of said agreement. An overthrow of the patent, therefore, at this time would also nullify the said agreement.

2. THE DEFENDANTS' PROOFS.

The defendants' witnesses, HILL and TAYLOR, testify as to joint transactions. It appears from their depositions that before the year 1860 John Hill was a bag-maker, at corner of Broadway and Warren street, New York, and at corner of Tenth street and Broadway, New York; being at the former place before 1858, and at the latter place between 1858 and 1860; that he made many thousands of travelling bags even previous to the year 1850, (answers 48 to 50, page 76), and that Taylor was his apprentice between the years 1850 and 1860. Taylor swears that during the period he worked for Hill in Warren street, New York, *i. e.*, between 1850 and 1858, he never saw any other kind of fastenings on travelling bags than the kind patented by the complainant, (see his answer 87, page 67), although the same witness in his answers 135 and 136 (page 70) swears, that previous to the year 1866 he never knew of any manufacturer of travelling bags using on their bags catches like the one described in the drawings of complainant's patent. And in answer 141, page 70, he specifies that he means by his answer 135, that he never saw any manufacturer using, prior to 1866:

> "*Those prongs coming down on each side so as to close the bag on each end.*"

Taylor further swears, in apparent contradiction of the above, that during the time he worked with Hill he did place upon bags catches similar to Exhibit No. 2 for holding the ends of the bags together, and in answer 23, page 63, he said, as the mode of fastening the same:

> "*We put a brass plate across them something similar to that.*"—*Exhibit No.* 2.

Hill is called to corroborate the witness Taylor in this respect, although his answer 14, page 74, which is relied upon as his statement of fact in this regard, is rather clouded. When asked how many such devices he made and applied while at Tenth street and Broadway, which is the only place to which he testifies in answer 15, page 74, as the place at which he made devices in question, prior to the date of the complainant's patent (for at Stilling's he worked till 1867, answer 10, p. 73), he answers (question 40, p. 75):

> "*I might have made two, and I might have made fifty; I could not tell. I might have had them made by the men or boys.*"

Is this evidence of a character sufficient to overthrow complainant's patent? Is it so clear as to leave no doubt in the mind of the Court that the devices in question had been actually made—that they had actually been used, and that the use was such as to impart to the public the knowledge required for further use of the invention.

> "*Every reasonable doubt should be resolved against the defendant,*" *who alleges prior use.* "*The law requires not conjecture, but certainty.*"—Coffin vs. Ogden, 18 Wallace, p. 124.

None of the devices actually made by Hill or Taylor have been produced. Hill states that he made thousands of bags, yet he never put any of these catches upon bags that he made, (answers 48 to 50, and 54 to 55, page 76).

Is it probable that a person who had knowledge of such an invention—of an invention, which, as soon as it was brought out by this complainant, was at once eagerly accepted by the entire trade, should have neglected to enjoy its advantages—to utilize the same by application to the thousands of bags that were adapted to receive it, which he made and sold? Both Hill and Taylor swear that they applied the invention only in repairing bags. Is it probable that they should have used it only for repairs when it would have been far more profitable to use it on new articles which they made, and in which they dealt?

Hill swears that he saw devices "made on the same principle" as complainant's patent prior to 1860 on foreign made bags, (see answers 21 and 22, page 74). Nevertheless, when asked by defendants' counsel whether Exhibit No. 3 was a foreign made bag or not, he answered that he could not tell, (answer 27, page 75). He therefore swears at one place that he saw the invention, or at least what he regards as the same principle, on foreign made bags. On the other side, he does not know what a foreign made bag is. He speaks about these devices being on the same principle as the complainant's patent, and Taylor always uses the expression that what he made before 1860 was "*similar* to Exhibit No. 2," (answer 19, page 63). Taylor says, that he applied the catches, or devices in question, while Hill's establishment was at Warren street and Broadway. And he mentions a particular instance (in answers 33 and 34, page 64) of a bag delivered to a person at the Irving House, which bag had such "similar" fasteners, while Hill, who ought to know best about that, says, that he would not swear that such catches were used while he was at Warren street, (answer 16, page 74), but that he made them while at the corner of Tenth street and Broadway, and when with Mr. Stillings, (answer 15, page 74), and that he never made, or applied anything, but what he made *himself*, (answer 14, page 74).

Now, he was with Mr. Stillings from 1863 to May 1, 1867, (see his answer 10, page 73), and his doings at that place are, therefore, not necessary to be regarded in this action, as they do not specify the use before 1866. Taylor says, that he saw foreign made bags, (answer 38, page 64), but in the same answer he carefully avoids to state that they had fastenings like those described in complainant's patent. To question 117, page 69, which is as follows:

"Can you give the exact description of the catches you put on?" He answers:

"A. Not the exact description. They were something *similar* to that "on bag Exhibit No. 2, only more neatly put on."

In answer 139, page 70, he repeats that the catches he made before 1860 were "neater" than Exhibit 2, while in answer 19, page 63, he says, Exhibit 2 is "neater" than what he made before 1860.

Taylor says, that after he left Hill in 1860, he made no more such catches, (answer 53 and 54, page 65); that, in fact, he made none at all after that time, and did not see them in the market until about a year after he came back from the war, in 1865, (answers 55 and 56, page 65).

The defendants produce four books, Exhibits Nos. 4, 5, 6, and 7, which it is claimed were used by Hill during the period specified in his testimony, but neither of these books contain entries of any orders or sales, indicating the application of catches or fastenings to travelling bags, nor does the stock book, Exhibit 5, show that said Hill had buckles in stock, although Taylor swears that he used buckles for making the catches in question, (answer 18, page 63). Taylor was twenty-two years old when he left Broadway and Warren street; his testimony was taken fifteen years later. Hill himself does not remember the transaction to which Taylor testifies as having occurred at Broadway and Warren street, although of the two, Hill would be more likely to have remembered them. And yet, although Taylor is so positive as to what occurred before 1858, his memory is not of the best, as in his answer 66, page 66 of the record, he proves that within seven years after the close of the war he had forgotten the name of his *company*, the name of his colonel, and the name of the captain under whom he served in the army. It took him much thinking after he was approached by Mr. Hill with reference to his testimony here to be given, to make up his mind whether or not he had made such catches, (see his answers 146, 149, and 150); he refreshed his memory about it :"

> " *In various ways, sometimes in bed, sometimes walking, I would get to thinking over it.*"
>
> " *The prior knowledge should be still in the memory of witness, before it is recalled by complainant's patent.*" Gayler vs. Wilder, 10 Howard, 496.

It has already been mentioned that the two witnesses, Hill and Taylor, used evasive answers, such as "*similar to*," or "*on the same principle as*," when describing the devices they used before 1860. The only explanation which can be given of their meaning of the term *on the same principle* is contained in Taylor's answers 156 and 157, page 72 of the record, which are as follows:

"Q. 156. Can you swear that the foreign catches were constructed like "the one on Exhibit 2, or as in the letters patent, Exhibit A, or from your "recollection, do you think they were the same?

"A. They worked on the same principle; the principle was to keep the "bag closed, and there is where they were the same.

"Q. 157. Otherwise, you cannot swear exactly how they worked?

"A. No."

The answers of the witness, Davis, (20 and 21, page 106), taken in connection with the answer of Taylor, to questions 126 to 128, pages 69 and 70, and answer 148, page 71, seem to leave a doubt as to the method by which the witnesses, Hill and Taylor, had been approached on the part of the defendants; the suspicion in this regard being justified by the disreputable character of one of the defendants, given him by Judge Nixon in the decision of another suit, Crouch vs. Speer, et al., which is reported on page 189, vol. 6, Official Gazette, Patent Office, as also by the fact that the same Court in the present case refused to give credit to the testimony of the witnesses, Edward Simon, William Simon, and Morris Schwerin, all members of the defendants' firm. A perusal of their testimony will satisfy the Court as to the propriety of the suspicion here expressed.

Rebutting testimony was not taken against the witnesses Hill and Taylor, on the simple ground that it was not possible to rebut it. Taylor was asked to name his co-workmen. He names none but errand boys. Their evidence would have been insufficient, even had the complainant been able to find them. But it is submitted that the evidence of Hill and Taylor, being so full of contradictions, in fact, and by implication, cannot be deemed sufficient to overthrow the complainant's patent.

> " *Where a want has always existed, and it is said that an old instrument would always have answered the want, the improbability (of the prior use) is so great as to require strong evidence to overcome it.*"—Howe vs. Morton, 1 Fisher, p. 594.
>
> " *The great utility of the invention being conceded, it is scarcely possible to doubt that if it had been applied to a single car on a railway, it would at once have gone into general use. When, therefore, the proof was, that if used at all, it was only on one car for some years.* HELD: *That this circumstance unexplained seems to be conclusive evidence against the existence of the invention in such car.*"—Sayles vs. The Chicago and North Western R. R. Co., 4 Fisher, 584.
>
> " *Experiments equivocal in their results, and given up for years, will not be permitted to prevail against an original inventor who has reduced his invention to practice, and obtained his patent.*"—Ellithorpe vs. Robertson, 2 Fisher, 83.
>
> " *It is not enough that the defendants raise a doubt on the point of prior use and knowledge. They must satisfy the Court on that point.*"—Magic Ruffle Company, vs. Douglass, 2 Fisher, p. 330.
>
> " Nay, *the proofs must be preponderating.*"—Tompkins vs. Gage, 2 Fisher, 577.
>
> " Ely vs, Munsen et al., 4 Fisher, p. 64. " *It would be extremely hazardous to rely upon the recollection of a witness who describes a machine from memory only, after a lapse of twenty-one years.*"
>
> " Also, Hayden vs. Suffolk Manufacturing Co., 4 Fisher, p. 86. *The greater the importance of an invention, the less the probability that if achieved it would have been laid aside. If the testimony as to want of novelty leaves the question in entire doubt, the party whose duty it is to prove it, has not maintained the burden of proof.*"
>
> " See also, Parham vs. The American Buttonhole Company, 4 Fisher, p. 468. " *To doubt upon the question of prior use, is to resolve it in the negative. If the persons interested in the prior machines laid them aside for years, and thus indicated a judgment against their practical utility, the Court but enforces a logical sequence in assigning them to the category of unsuccessful and abandoned experiments.*"
>
> Seymour vs. Marks, 6 Fisher, p. 115.
> Gear vs. Grosvenor, 6 Fisher, p. 314.
>
> Chase vs. Wesson, 6 Fisher, p. 517. " *Doubts as to the existence of prior devices are greatly confirmed by the omission, on the part of the defendants, to produce any such harness ring as their witnesses testify to.*"
>
> See also, Brady vs. The Atlantic Works, 10 Official Gazette, Patent Office, p. 702.

Andrews et al. vs. Carman, 9 Official Gazette, Patent Office, p. 1011.

Hawes vs. Antisdel, 8 Official Gazette, Patent Office, p. 685.

This case of Hawes vs. Antisdel has many features, parallel to that here at issue; it received the most careful consideration of Judge Longyear, and attention to his opinion is most earnestly and urgently invited. In that case as in this, the defense rested entirely upon the recollections of witnesses, at a distance in time from eight to twenty years, unaided *in a single instance*, as in this case, by any contemporaneous memorandum or model whatsoever.

Wood vs. Cleveland Rolling Mills Co., 4 Fish. 550, 560.

Perham vs. American Buttonhole Co., 4 Fish. 468, 482.

Taylor vs. Wood, 12 Blatchford, p. 110.

Union Paper Collar Co. vs. Van Deusen et al., 7 Official Gazette, Patent Office, p. 919.

Stillwell et al., vs. Cincinnati Gas Company, 7 Official Gazette, Patent Office, p. 829.

Seymour vs. Osborne, 11 Wallace, p. 552.

THE WITNESS GRIFFITH swears in answer 2, page 94, that he first saw a bag having fasteners, substantially like complainant's patent, about the year 1854 or 1855 in Canada, and that in 1853 he purchased a bag in London which had catches similar to those above described; that he brought this bag which he so bought in England to Canada, and between 1859 and 1867 frequently to the United States, (answers 6 and 7, page 94). The bag which he purchased in London did not have any fasteners on, but *on purchasing the bag*, (see answer 8, page 94), he asked to have the catches put on, which was done, and the bag had no lock, (answer 9, page 94).

Now, even if all this were true, it is not a proof of prior public use within the United States. A bag without a lock is not likely to be used as a travelling bag. Nor does the witness say that it was a travelling bag. He calls it simply a bag; being without a lock, it is not likely that he ever gave it out of his private possession, for it is well known and evident that every traveller secures his property by lock and key in the receptacles that contain it, especially when he has to submit it to the handling of others. The witness does not show that he ever exhibited the bag to any one, or that any one else ever saw it, nor that he ever gave it out of his possession, nor how large a bag it was. If his story be true at all, the bag was probably a very small affair, which the witness was able to retain in his private possession without even exhibiting it to others, or entrusting it to others.

Nor does the witness state when the catches, which he said he had put on, were put on, nor by whom, nor where they were put on. For all we know, he might have used that bag without any catches for a long number of years, and afterwards have had them put on.

The only catches which he identifies as similar to those on his bag are on Exhibit 14, (a newly made affair) and this Exhibit the witness did not see until the day on which he testified, (answer 19, page 95). He said the first bag he ever saw having a catch on it was about 1854 or 1855, (answer 20, page 95) the bag he purchased in London in 1853, (answer 2, page 94) making it evident that when he purchased the bag in London it had not then catches on, because he first saw the catches after he had bought the bag. This supposition is much strengthened by the answer of the witness to question 22, page 95 of the record, where he states as follows:

" *Having closely examined the first bag I had ever seen, which was about the year before referred to, (to wit,* 1854 *and* 1855) *thinking they would be just the thing I wanted for my bag, (thus showing that at that time he already had that bag) so as to prevent the sides of it from bulging out, and* SINCE, *on the bag which I purchased in England.*"

The answer of this witness to question 32, page 96, is also significant. The following is the question and answer referred to :

"*Q. You have seen various kinds of catches for bags previous to the year* 1866 *applied to the jaws of travelling bags, at or near the corners of the frames at each end of the jaws, have you not, for the purpose of holding them together, and relieving the lock, other than the one you have described in the bag you purchased in London, and on the bag you saw on the boat going to Toronto?*

"*A. No, I have not. I had a bag that did fasten near the corners of the frame by a lock, which shut into it by turning of the key : but they were inside. With the exception of the leather fastenings of the buckle and strap,* I HAVE NOT SEEN ANY THAT I NOW RECOLLECT."

Again, the witness in answer to question 25, page 96, states that he does not think the catch which he had put on his bag was already fastened to the sheet or plate which covered it before being put on the bag frame.

But the witness, William Simon, in answer to questions 62 to 68, page 112, states, that Exhibit 16, which is a fastener, having the plate and catch connected before they are applied to the bag, is one of the catches taken from Mr. Griffith's bag, and that the first time he ever saw the same was in the year 1870.

The evidence of said Griffith is therefore uncertain as to the kind of catch which he actually used, for there is a material difference between Exhibit 16 and Exhibit 14, so much so that it was held in the suit of Roemer vs. Lagowitz above referred to, that such a device as Exhibit 16 even if in prior use, would not anticipate complainant's patent. On this ground again, the attention of the Court is called to the opinion of the court below in the suit last referred to, which opinion is on file in this Court in connection with the papers that were filed with the motion for admitting certain new testimony.

Curtis on Patents § 491. *The evidence for defence must be positive.*

Apart from this the failure of Griffith to state when he had the catches applied to his bag, whether before the year 1866 or after, his contradiction in first stating that he saw the first bag in 1854 or 1855 ; that at that time he already had been in England, and again that it was before he visited England, answer 20 p. 95; his failure to correctly describe the fastening, the want of proof that others saw it, while he had it about his person, are fatal to the defendants and cease to be proof of prior use of the invention within the United States, nor does it appear logical to construe as prior public use within the United States a possible secret use of a device on the person of an occasional foreign traveller.

THE WITNESS SAYERS states (see page 117 of the record) that previous to 1868 he had particular charge of the bag department of the firm of Calhoun & Robbins in New York and that previous to the year 1866 he saw on imported bags at their place of business catches or fasteners :

" Of the same general idea " as Exhibit No. 17 (answer 3 page 117).

" The idea was just the same as this ; a saddle connecting the two jaws " of the bag, how fastened I cannot say whether by a strap or otherwise" (answer 4 page 117).

It will be seen that the failure of the witness to state how the catch was fastened, leaves it in doubt whether what he saw was an old pocket book clasp or a device something like the middle catch in Exhibit 13, or whether it was a device similar to that patented by the complainant. The witness has none of the bags in question nor does he know where any of them are now, (answer 16 and 17 page 117).

THE WITNESS DOXSEY who was called four days after Sayers was better prepared to say how the catches at Calhoun & Robbins' place where he had also been employed before 1868, were fastened. He says in answer to question 4 page 119 that they were made with a clamp fastened to the frame by a plate and the clamp worked over the jaws of the frame. He does not explain what he means by saying that they were made "with a clamp," nor is he able to describe the plate, (see his answer to question 62 page 122) which he should be able to state if his recollection was as clear as he wants to make it appear. He says that he first saw these catches on bags in the fall of 1865 and that (answer 7 p. 119) "we used to sell them early in the spring, of 1866."

In answer to question 8, he says, that such *bags* were sold by the firm before they moved from Vesey street to Broadway, which is stated to have taken place in January, 1866, but he does not say whether the bags thus sold before moving had any catches on them. Thus, the witness, although he was better prepared than Sayers, as to the statement of the mode of fastening the clamps, fails to show that such devices were on sale before complainant made his invention. The date of the invention has been given by Mr. Roemer as February 14, 1866, (answer 10, page 10; also, answer 92, page 17).

Mr Sayers, who had particular charge of the bag department, does not say that any of these devices were sold, to his knowledge. He should know more about this than Doxsey, who, when asked whether he sold such devices, says, in answer 54, page 121, "I *think* I did." To his *knowledge*, therefore, none were sold before the date of complainant's patent. He was salesman, (answer 17, page 120) and should therefore know whether any were sold prior to 1866. The description of the device, which they claim to have seen in Calhoun and Robbins' establishment is altogether indefinite. Sayers does not say how they were fastened—whether by pin, plate or otherwise. He swears they were not like Exhibit 17, (answer 15, page 117). Doxsey says that they were made with a clamp fastened to the frame by a plate, and similar to Exhibit 17, and that the clasps were all fastened on by *a plate*, (answer 45, page 121).

No books were produced to show the entries and sales of these bags. Neither of the witnesses is able to state to whom the bags, having such catches, were sold, although Calhoun and Robbins did not retail, but only sold their goods at wholesale, (see answers 56 and 57, page 122) leaving it easier to remember the names of the purchasers than could be done if sold to retail dealers. Not even the name of the manufacturer or exporter of these bags is given; it is simply stated that they were imported from France. But Mr. Roemer proves that he made a special agreement through Mr. Neumann for the manufacture of his patented device in France, and for their importation into the United States, and that he obtained a royalty from the same of thirty-five cents per dozen pair, (see agreement, Exhibit 22) and that some of his first bags having the patented fixtures thereon, were by him sold to France, to the firm of Steinmetz, which is the only French firm mentioned throughout the testimony as manufacturers of travelling bags, having catches thereon. [Roemer's answer, 51, p. 37].

Mr. Neumann proves (see answers 82 to 90, p. 54) that he imported from Steinmetz trimmings and fasteners prior to Roemer's patent, which fasteners were entirely different from those described in said patent—so far different that there is no comparison between them. This renders the story of Doxsey very doubtful; he stands alone, and is not supported by Sayers, nor in any other manner is he corroborated; the only clue to his testimony may be found in his answers to questions 69–71, p. 172.

The defendants' proofs are certainly not of such a character as to overthrow the very strong *prima facie* case of the complainant, much less to overthrow the case as established by the rebutting testimony of the complainant, where he shows the dealings with French firms from which he derived royalty under the said patent, and where it is also shown that such large houses as Tiffany & Co., Schuyler, Hartley & Graham—all of whom deal extensively in travelling bags in New York, had not known the invention in controversy prior to the time of complainant's patent, (see depositions of Crouse, Fargis, and Andrews, pages 77, 95, and 109 of record). As to the sufficiency of Doxsey's evidence, the attention of the Court is respectfully invited to the following decisions:

> Seymour vs. Osborne, 11 Wall. 550.
>
> Taylor vs. Wood, 12 Blatchford, p. 121. "*Evidence vague and unsatisfactory does not establish affirmatively as against the plaintiff's patent, that the plaintiff was later in time of invention.*"
>
> Godfrey vs. Eames, 1 Wallace, 317.

It does not appear affirmatively that the *public* had any prior knowledge of the invention, or access thereto, before 1866. If Calhoun and Robbins had such bags with catches thereon, like those patented by complainant, and kept them from public view until they first *exhibited* them for sale in 1866, the previous secret possession of the devices in question does not amount to prior public use or sale, such as is contemplated by the Act of July 8, 1870, as sufficient to defeat a patent. Finally, it is submitted that whatever Doxsey claims to have known of the invention in 1865, was not *within the knowledge of a competent mechanic*," for Doxsey is not a mechanic, (answer 32, 33, page 120). Curtis on Patents, § 87 *a*, page 91.

3. THE WANT OF NOTICE.

As already stated, no notice of the intention to take the depositions of the witnesses, Sayers and Doxsey, had been given in the answer of the defendants. Objection to the reading of their depositions was made at the hearing by complainant's counsel, as appears from the opinion of the Court below. Nevertheless, the Court below considered said testimony, and allowed it to affect the complainant's cause.

It is here submitted that this was a serious error on the part of the Court below. The law strictly provides (§ 61, Act of July 8, 1870) that in equity cases the defendants must give the names and residences of the persons through whom they intend to prove prior knowledge, and also the places at which, and by whom the same is said to have been used. Is the statute to stand for naught? The Courts have always held that such notice is necessary. The Supreme Court has so held in the case of O'Reilly vs. Morse, 15 Howard, p. 110. In the case of Agawam Co. vs. Jordan, 7 Wallace, p. 583, 596. In Seymour vs. Osborn, 11 Wallace, p. 516, 539. In Rubber Company vs. Goodyear, 9 Wallace, 788. In Blanchard vs. Putnam, 8 Wallace, 420, 427. Also in the Circuit Courts, see Pickering vs. Phillips, 10 Official Gazette, p. 420. In U. S. & F. Salamander Felting Co. vs. Haven, 9 Official Gazette, p. 253.

"*The Court cannot take notice of what was not set up against the plaintiff's patent in the defendants answer.*"

In Rubber Co. vs. Goodyear, 9 Wallace, p. 793, this Court held, that "*The proofs and allegations must correspond. The examination of the case by the Court is confined to the issues made by the pleadings. Proofs without the requisite allegations are as unavailing, as such allegations would be without the proofs requisite to support them.*"

See Railroad Company vs. Dubois, 12 Wallace, pages 47, 65.

The Court below took the ground that the failure of counsel for complainant to object to the testimony of Sayers and Doxsey before the Examiner, was a waiver of the objection to notice. With this view, it is intended here to take issue. Counsel for appellant has failed to find any decision of the Supreme Court on this point. All the decisions of the highest Court simply state that proofs not noticed in the answer cannot prevail at the hearing. It is clear that if complainant's counsel had failed to object at the hearing he would have waived his objection. But the objection before the Court is the only proper objection to take. How could the failure to object before the Examiner injure the defendants, who well knew, at that time, that their proofs were not in harmony with their pleadings? No principle is better settled, than that a party is not estopped by his silence, unless it led another to his hurt.

Hill vs. Epley, 7 Casey, p. 334.

It has been held, that the object of the Statute, in requiring the notice referred to, is to guard the plaintiff against surprise. If he be so surprised, nevertheless, is it not proper that he should raise his objection before the Court that is to determine as to the sufficiency of the proofs? Is the objection not timely if raised as soon as the objectionable evidence is sought to be read in Court? Is the *defendant* in any way surprised by that objection? Is the Statute complied with by the consideration of such testimony under objection? Do the pleadings and proofs of the defense agree, as they should, if the proofs contain matter not mentioned in the pleadings? Can, in fact, any Court assume the responsibility of disregarding the dictates of the Statute, which has been established for the protection of inventors, and admit, to their injury, matter in evidence, which the law distinctly states, should not be admitted in evidence?

It is here respectfully submitted that a patentee cannot be deprived of his statutory rights by any custom of Courts, or by acts not provided for by the Statute. The object of the written law is to overcome established habits, which otherwise would take the place of the law. Why should the objection be made before the Examiner, and not before the Court? Where is the provision in law, or in equitable practice, that requires such a distinction? Has the Examiner power to adjudicate upon the validity of the objection? Certainly not. The Court alone is judge of its sufficiency, and before the Court therefore the objection should be raised. It may well be asked, if it be held that the objection should be raised before the Examiner, and not before the Court: when is it to be raised before the Examiner? If a witness is brought to prove matter not pertaining to prior knowledge, or use, or the opposing counsel does not know, which is frequently the case, where the answer contains, as in this case, a long list of names, that the testimony of the witness is to be a link in a chain seeking to establish prior knowledge, or use, is the objection to be raised *pro forma* merely, or is it unnecessary? Does the Court require plaintiff's attorney to encumber the record with manifold objections against all the witnesses that may be brought by defendant, simply because they are not named in the answer? This would frequently make the record appear ridiculous, for many witnesses are brought in patent suits to prove collateral facts, many are brought to prove prior knowledge in parties that were named in the answer, although the witnesses themselves are not named. Are they to be objected to? Is the plaintiff bound to object to such witnesses as soon as they are produced, simply because they were not named in the answer? If the objection at that stage of the proceedings is not necessary, but may be raised after the objectionable deposition has been given, it will at once appear that after the deposition has once been taken, it is just as much too late to raise the objection before the Examiner as it is to raise it before the Court.

The proper course of the defendants in such cases is to move for an amendment of their answer *immediately upon the discovery of important evidence* of prior knowledge or use, which they intend to adduce, and to connect that motion with proof, showing that such new testimony was not *within reach of the defendants at a prior stage of the proceedings*. This has been neglected by these defendants. They did not move for a timely amendment of their answer. They produced proofs, which under the law, they had no right to produce, and the Court considered these proofs, which under the law, it had no right to consider. It is true, that the final decree of the Court below authorizes an amendment of the answer, whereby the names of these witnesses are incorporated therein. But it is nevertheless also true that the Court considered said evidence without the necessary *anteceding* compliance with the Statute. The complainant, in not specially rebutting the evidence of Sayers and Doxsey, relied upon his right under the Statute. He relied upon it because he relied upon the decision in The Agawam Co. vs. Jordan, where it was held that

> "*Evidence to prove such a defence*" *(of prior knowledge)* "*in a suit at law, is not admissible without an* ANTECEDENT *compliance with those conditions,*" *(to wit, notice of special matter)* "*and the settled practice in equity is to require the respondent, as a condition* PRECEDENT *to such a defence to give the complainant substantially the same information in his answer. Unless the practice were so, the complainant would often be surprised, as the rule of law is, that the Letters Patent afford a* PRIMA FACIE *presumption that the patentee is the original and first inventor of what is therein described as his improvement, and if the respondent should not be required to give notice in the answer that proofs would be offered to overcome that presumption, and establish the opposite conclusion, very great injustice might be done, as the complainant might rely upon that presumption, and fail to take any countervailing proofs.*"

Thus the possibility of the complainant failing to take rebutting proofs in such cases has been foreseen, and justified. This justifies necessarily also the raising of the objection at the hearing. Under that view, it would have been the duty of the defendants to amend their answer, *before the complainant had rested his rebuttal;* so as to force him to rebut these witnesses to his fullest ability.

The complainant's attorney cross-examined these witnesses, evidently because he regarded their evidence to be a weak attempt to prove the state of the art. That the cross-examination of an objectionable witness is not a waiver of objection was clearly held in Perigal vs. Nicholson, Wightwick, p. 63.

In that case the objectionable character of the witness appeared from his testimony ; the witness was cross-examined, and his deposition objected to at the hearing, before his evidence had been read. It was held that that objection was sufficient to exclude the testimony.

See also Scott vs. Fennick, 13 Gwillim, 1255.

The Philadelphia and Trenton R. R. Co. vs. Simpson, 14 Peters, 592.

Respectfully submitted,

A. v. BRIESEN,
Of Counsel for Appellant.

New York, Sept. 21, 1877.

SUPREME COURT of the UNITED STATES

OCTOBER TERM, 1877, No. 40.

WILLIAM ROEMER,
Appellant,

vs.

EDWARD SIMON, SAMUEL SIMON, WILLIAM SIMON, and MORRIS SCHWERIN,
Respondents.

Brief for Respondents.

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Supreme Court of the Unied States.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES.

DISTRICT OF NEW JERSEY.

WILLIAM ROEMER,
vs.
EDWARD SIMON, *et al.*

Statement of Facts.

This suit is founded upon an alleged infringement of a patent granted to William Rœmer for an alleged improvement in travelling bags.

The bill alleges the grant of the patent to William Rœmer, on July 31st, 1866, and is in the usual form.

The defendants, by their answer, justify their action, avering that the alleged invention of Rœmer was not original with him.

(*a.*) That it had been previously known to a large number of persons named.

(*b.*) That it had been in use abroad, and was surreptitiously and unjustly patented by the complainant in this country, he having seen it abroad.

(*c.*) That it had been described in a printed publication, of one Fisher, of 188 Strand, London, prior to 1866.

The case was brought to a final hearing before his Honor, Judge Nixon, in the before-mentioned Court ; he rendered decision in favor of the defendants, and dismissed the bill of complaint.

The opinion may be found in the record, pages 147–151.

The complainant thereupon appealed to this court.

Statement of the Nature of the Controversy.

I. The Construction of the Complainant's Patent.

The complainant states his patent as follows: "The nature of my invention consists in the application of two staples or clamps, one at or near each end, to the frame of a traveling bag, &c., in such a manner that where said bag is packed very full, said staples or clamps shall fasten the ends or corners together."

The patentee then describes a mode of fastening the staples or clamps to the frame of the bag by a strap which passes over the centre of each staple. He states that the staple or clamp, "is made of strong iron, turned down at each end."

"This clamp," he says, "is easily made at very small expense."

He does not describe the "strap" further than to indicate it in the drawings.

He says: "I am aware that clamps have been applied to small and fancy bags instead of a lock, at or near the centre of the frame, and do not claim therefore the application of clamps or staples broadly ; but what I claim as my invention and my desire to secure by Letters Patent, is a frame for traveling bags, having staples T, and strap E, adjusted on the top thereof, relieving the lock from strain as described, constructed, combined and arranged substantially as specified."

It is obvious from inspection of this specification that the real invention, if any, is in the clamps themselves, and in the arrangement of two of them on the top of the frame.

If the clamps be once invented, the particular method of attachment to the frame, cannot be material, any mechanic could affix the clamps in a number of equivalent ways.

Such is the evidence in the case. (Schwerin's Ev., p. 123, q. 11-14; Whitlock's Ev., p. 126, q. 5 to 7).

The patent itself lays the whole stress on the "clamp," its cheapness, construction, &c.

It lays no accent on the special form of fastening of the clamp, and it is obvious that in a suit for infringement, a defendant could not evade the patent by showing that he used a different method of fastening the clamp to the bag; any form of fastening in so simple a contrivance, would be held an equivalent.

The same rule of construction must prevail in considering the question of novelty. Rœmer himself admits that the patent is not confined to a simple strap, as a fastening for the clamp, for he includes the *solid castings* of defendant's Exhibit No. 1. (Rœmer's Ev., p. p. 12, Q. 30; p. 5, Q. 77-80).

II. The Position of the Defendants.

The defendants claim merely to be using a fastening for bags, which was well known to their senior partner, Edward Simon, many years ago, abroad; and which had been employed by him from time to time in this country, prior to the date of complainant's alleged invention.

(Edward Simon, p. 89, Q. 10 to 20 and p. 90, Q. 35 to 41).

They adopted the special form of fastening now used by them and for which they are sued, from a catch exhibited at the Paris Exposition, of 1867.

(Schwerin's Ev., p. 124, Q. 17.)

An attempt was made in the Court below to prejudice these defendants because there was a *prior* trial of this patent against *other* parties, and because on the testimony adduced in that case the former patent was adjudged valid.

But these defendants were never parties to that suit, and had actually been denied participation in it.

(Simon's Ev., p. 93, Q. 68–74).

Points on behalf of the Defendants and Appellees.

First Point.—The complainant's patent is void for want of novelty.

The evidence of want of novelty in the claim of the patentee is conclusive and uncontradicted.

The facts relied on by the defendants to prove this point show that bags having catches upon them in all respects like complainant's patent were largely manufactured and sold abroad. That they were, from time to time, sent to this country with such catches upon them, and were seen, used, repaired and sold, and other like catches supplied in this country.

I. Evidence that catches like Complainant's patent were known, used and sold abroad, and especially in England.

The deposition of Mr. Samuel Fisher, contained in the commission sent to England, gives a full account of the manufacture and use of these catches. In answer to interrogatory 5, he states that prior to the year 1861 they had been manufactured and sold by a man named Marx, who represented that such catches were protected by registration. Fisher also states that ever since that time they have been made and sold by himself.

(See Commission, p. 147.)

Oscar Ditzes, an acquaintance of Mr. Roemer since 1862 (p. 107, Q. 3–5), was in London, England, from October, 1861, to March, 1863 (Q. 98), and in Cologne in 1863; during the time he was in London he saw such catches in London (Q. 16) "many of them." (Q. 23) at Keller & Bertram's, 28 Remsen street, near Oxford (p. 108, Q. 17), and he thinks at Shaffer Brothers (Q. 19). The manufacturer was a German, whose name witness could not state (doubtless Marx), (Q. 21). He exhibits a drawing showing the catch both attached to and separate from the plate (Q. 25–28, Exhibit 19). The catches were applied to traveling bag frames in London, precisely as shown in complainant's patent (Q. 43–45.)

Samuel Phillips worked in Birmingham, England, for John Harrison, 120 Great Charles street (p 78, Q. 14), and afterwards in London for Moritz Wolfski, Newgate street (Q. 5), and Hoffman of Clerkenwell (Q. 58), and Frankenburg & Bros., of Snow Hill, London (Q. 62). The period of such employment appears to be from about 1858 or 1859 to 1864 (Q. 12 and Q. 110–15, and 126).

While at Harrison's he saw used bag-fastenings like Exhibit 8 (Q. 15), and while at Wolfski's, in London, he riveted bags of Muller's make, of Paris, with the same fastening as Exhibit 3 (Q. 15).

One of the manufacturers of these catches was Enoch Hall, 2 Mill street, Willinhall, Staffordshire.

There were others, but their names were forgotten (Q. 19).

THOMAS WALTER GRIFFITH, a gentleman representing as agent the Liverpool, London & Globe Insurance Co. and others (p. 94, Q. 1 and 17) purchased a bag in London, England, in 1858, having just such catches upon it (see Exhibit 14, Q. 2 and 21). He saw such catches on bags of English officers in Canada in 1854 to 1858 (Q. 2 and 20).

ALBERT JEUCH came to this country on the 13th of April, 1865 (p. 114, Q. 8); he had two catches identical with plaintiff's made for a bag (Q. 11 to 12, exhibit 17), by Faure & Klieber, of Paris (Q. 13), at Rue de Maux, Villette (q. 14). This was in the beginning of 1864 (Q. 15).

CARL FREDERICK SPERLING came to this country in April, 1866 (p. 86, Q. 3 to 5). He worked at bagmaking in London, England, from August, 1863, to March, 1866 (Q. 8), at first on his own account, and afterwards as foreman of Loebel and Rick (Q. 8).

He produces a sample of the catches and the mode of their application (Ex. 10) such as he made in London between August, 1863 and 1864 (Q. 12 and 13). These catches are the same as plaintiff's.

Such catches could have been bought ready-made in the London market at that time (Q. 17) for a shilling a pair (Q. 18.) He saw "bags with and without them in the streets and in the windows," (Q. 20).

All were the same as Exhibit No. 10, except as to the thickness of the wire of the clamp, or the mode of *finishing*, (Q. 14 to 16).

CHARLES DEHNER saw the same catches at the London Exhibition of 1862, (p. 142, Q. 10, 11.)

THOMAS BRIGGS, who was called by *the complainant*, and who had lived in England all his life, and who is the only witness from abroad produced by them, *was not asked by them to testify on this subject.*

Edward Simon saw the same catches at Stolpe, Prussia, and at Muenster, Cologne, Kneuznach, (p. 89, Q. 11, 14, 18).

Henry Spier saw the same in Frankfort, (p. 132, Q. 21).

These witnesses conclusively demonstrate that this invention was well known abroad.

On this point of the case Judge Nixon decided as follows, after making a careful analysis of the testimony of Fisher, Ditzes, Sayers, Doxley, Griffith, and Sperling:

"There was no contradiction of these witnesses, and their evidence seems to establish the defendant's proposition that there was a foreign prior use of the improvement described and claimed in the complainant's patent."

See Opinion. Transcript of Record, pp. 148 and 149.

II. Evidence that such Catches were brought to this country, and here seen, used, sold and repaired.

Edward Taylor testifies that he was employed in the establishment of John Hill, at the corner of Warren street and Broadway, from 1850 to 1857, (p. 62, Q. 1 to 7) and afterwards at the corner of Broadway and Fourth street, New York, from 1857 to 1860, (p. 62, Q. 9 to 14).

During those periods, the witness put fastenings on *foreign made* bags, as shown in the Bag Exhibit No. 2, (p. 63, Q. 17 to 25).

He says (Q. 18): "I would take a buckle and cut it in two, so as to make a piece for each end, and fasten it on with a piece of brass on the top of the frame; I also made them out of brass wire, if I did not have a buckle in the office that would suit."

These clamps made from buckles were attached by a "brass plate across them," (Q. 23); "the prongs" "held the jaws of the bag together," (Q. 95.) They were applied on "top of the frame" (Q. 26)"at each end," (Q. 27.) The first one of this kind that he did was "for a gentleman in the Irving House," (Q. 33.) He saw *foreign made* bags, with catches of the same construction, at both the Warren and 10th street establishments, (p. 64, Q. 38; p. 65, Q. 49, 50.)

On such bags, the catches "came down on each side like in Exhibit 2, and were fastened on the top by a plate," (p. 64, Q. 39.)

There can be no question but that these catches and the mode and place of their application to the bag frames, were all identical with the alleged invention of Roemer.

The witness's evidence is of the most satisfactory and convincing description. He uses, indeed, some idiomatic expressions, and says in several places that the catches he made were "similar" or "something similar" to the catch on Exhibit 2. But this expression of the witness does not indicate any uncertainty as to the *essential features* of the fastening, and is only a conscientious limitation as to *exact* identity of *finish* and neatness of material. This is made evident by question 139–140, page 70. (See also Q. 117, 118, 119, p. 69; Q. 161, 162, 163, p. 72.)

This witness is entirely disinterested; his whole testimony seems to be marked by a conscientious desire to state the truth and nothing but the truth. There is not a word of testimony to contradict him, and it is impossible that he himself can be mistaken.

John Hill, the employer of Mr. Taylor, confirms his evidence in every particular. He corroborates the date of making at Warren street and at Tenth street (p. 73, Q. 3 to 7). He himself made the catch shown in Exhibit 2 (Q. 14). He made and affixed such catches while at the corner of Tenth street and Broadway and when he was with Mr. Stillings, and is *positive* as to the fact (p. 74, Q. 15, 17). He would put on as many catches as the customer desired; if one, putting it on the centre; if two, "one at each end" (Q. 18), and making them generally out of a buckle, if he had one to fit the frame, if not, out of a piece of wire (Q. 20).

He also states that he saw at the Tenth street establishment *foreign-made bags* with the same catches upon them (Q. 21 to 28).

The deposition of Mr. *Hill* is in complete accord with that of Mr. *Taylor*, even in respect to such collateral circumstances as the other kinds of fastenings for bags seen by them. (See Hill, p. 77, to 60; Taylor, p. 67, Q. 88). It is certain, definite, and decisive, the only particular in which his and Mr. Taylor's memories are not the same, is as to the making of the catches in question at the *Warren* street establishmet; as to that, Mr. Hill, influenced by the desire to say nothing but what *he himself fully* remembers says that "he would not *swear* to it." (p. 74, Q. 16.)

Not a single fact or circumstance is advanced to show that Mr. Hill is mistaken in any particular. He himself swears *positively* to the facts he does swear to, and in the absence of all contradiction or evidence of mistake, they must be taken as true.

This uncontradicted evidence of Mr. Hill and Mr. Taylor is sufficient to establish the defendant's case; it is full, positive and conclusive; no attempt at contradiction has been made, because it was known to be *useless*.

Judge Nixon, in his opinion, recites at length the testimony of these two witnesses, Hill and Taylor, and comments on it as follows :

> "If they speak the truth, and there was no attempt made to impeach the accuracy of their statements, there is no reasonable doubt that the patented improvement of the complainant was known and in public use in the United States for several years prior to his application for a patent."

See Opinion, Trans. of Rec., p. 150, folio 318.

But again—

HENRY J. DOXEY, a salesman with H. J. Sayres & Co., of New York, (p. 119–Q. 1), testifies that until January 1st, 1866, he was in the employ of Calhoun & Robbins, at No. 26 & 28 Vesey street, N. Y., (Q. 3). That as early as the fall of 1865 (Q. 7), while he was with said firm in their Vesey street establishment, he saw some *imported* bags having side catches upon them (Q. 4). These catches "were made with a clamp fastened to the frame by a plate, and the clamp worked over the jaws of the frame." (Q. 4.) They were identical with the catches on Exhibit 17, except "in the manner of finish." (Q. 5). On each bag "there were two, and they were fastened to the top of the frame near the end." (Q. 9.) He saw at least a dozen. (Q. 9.) Mr. Doxey's memory of these bags and their fastenings is of the most *positive* description, and without the least trace of uncertainty or indefiniteness. (See particularly cross-questions 41 to 53.)

HENRY J. SAYERS confirms Mr. Doxey; Mr Sayers was also with Calhoun & Robbins (p. 116, Q. 2), and had particular charge of their bag department; previous to 1866, Mr. Sayers saw, at Calhoun & Robbins, imported bags having upon them catches, consisting of a "*saddle* connecting the two jaws of the bag." (Q. 4.) The ends of the saddle turned down on the sides of the jaw. (Q. 5.) There were two on each bag. (Q. 6.) Mr. Sayers cannot say whether those catches were fastened to the jaws ;" by a strap or otherwise," (Q. 4) but it is manifest that he is referring to the same articles to which Mr. Doxey referred, and Mr. Doxey is positive that the catches were fastened by a plate or strap, as in Exhibit 17.

This evidence of Mr. Doxey and Mr. Sayers is absolutely demonstrative that the complainant's patent is void for want of novelty. Each witness is entirely disinterested, and each testifies to what he *positively* recollects, and nothing further. The very fact that Mr. Sayers identifies the *clamp* part of the fastening, and cannot be certain as to the particular mode of attachment, shows conclusively that these gentlemen are speaking only of what they *know*, and are unwilling, even when each is assured by the memory of the other, to say anything except what their *own* memory *fully* bears out.

The memory of both taken together assures us that they did see in this country, at least as early as the fall of 1865, on imported bags, the very thing now claimed by the complainants. The *date* is fixed by reference to events, and the thing itself is positively identified by Mr. Doxey, and substantially by Mr. Sayers.

Even Mr. Sayer's measure of uncertainty is a proof of the genuineness of what he does remember, and Mr. Doxey was of an age and experience sufficient to make him a thoroughly competent witness. Though he was never actually engaged in the *manufacture* of traveling-bags and their fastenings (p. 120, Q. 32, 33), he has *dealt* in such articles all his life, and is certainly as competent to speak of them as one who has done the manual labor of making them.

Again:

C. Joseph R. Davis testifies with *great particularity* to the making of a side-catch for a foreign-made bag as early as 1842 (p. 104, Q. 7). He produces a sketch of the catch, and of the bag itself with the catch he applied upon it (Exhibit 18). He adduces a great number of particulars which call to his mind the making of this catch, and the trouble that accompanied it (p. 104, Q. 7).

This evidence is certain and definite, and not a particle of testimony in the case contradicts or throws doubt upon it.

It, too, completely disposes of the "*novelty*" of Roemer's alledged invention.

Again:

D. Thomas Walter Griffith testifies that he brought to the United States the bag with these catches upon it, which, as we have already seen (p. 94, Q. 2), he bought in London in 1858 (p. 94, Q. 5, 6). He says that prior to 1866 (misprinted "1860") he brought it "certainly more than a dozen times to New York, Boston, Buffalo, and Rochester" (Q. 6).

Even if this testimony were all the defendants had, yet this alleged invention had certainly, in 1866, been "known and used by others in this country." (Section 24, act of 1870.) Who can tell how widely the knowledge of an invention might have been disseminated which had been brought to and left at our public hotels in many of the principal cities? Certainly it was then known "in this country" to the "user" himself, and all others had the opportunity of knowledge, which is enough.

On this branch of the case Judge Nixon decided as follows:

"After a most careful examination of the testimony of Hill, Taylor, Griffith, Sayers and Doxey . . . . . . it seems impossible to doubt that the device of the complainant for fastening together the jaws of satchels and traveling bags was known and used in this country for many years before the patentee claims to have made his invention."

Opinion: Trans. of Rec.; p. 151.

E. ALBERT JEUCH testifies that in August, 1865, he saw a *foreign* sample card, at Messrs. Simon & Brothers, having on it a "single" bag frame, with catches on it like those on Exhibit 17. "They were the same catches, only ornamented a little more." (p. 114, Q. 5). On the frame there were "two catches, and they were fastened on top." (Q. 6.)

The *date* is assured, because Mr. Jeuch only worked for the Simons from August, 1865, to March, 1866. (Q. 2.)

We say nothing as to the positive evidence of the defendants, Edward and William Simon (because there was an attempt to show that in some particulars they were mistaken). We prefer to rest this case on the certain and uncontradicted evidence of the disinterested witnesses.

We submit, however, that the Messrs. Simon were correct in their evidence. They both speak with certainty as to facts within their own knowledge, and the only evidence which tends to contradict them is the evidence of the clerks of Tiffany & Co., and Schuyler, Hartley & Graham, who can, *in the nature of things*, only say that they have no memory of the occurrences to which the Messrs. Simon refer. It is next to impossible that a clerk in a large establishment can say *positively* that a particular style of bag catch was *never* in his establishment. If they had ever been there, he might be able to *positively* identify them, but it would be difficult for any one truthfully to say positively that such things were *not* there.

This seems to be the result of the cross-examination of Messrs. Fargis & Andrews & Crouse, and agrees with their previous statements to Mr. William Simon. (p. 134, Q. 1 to 5.)

Again:

G. LEWIS HILBRECHT testifies that in 1864 (p. 135, Q. 17, 18, 21, 31) he made two kinds of catches, both of which are identical with complainant's, and he produces a sketch which clearly illustrates them (Exhibit 23½). The second catch (Fig. No. 2) is an improvement on the first, in that it is provided with a loop on the shaft for a strap. In this it more resembles the defendant's catch, which is provided with a knob in the same place.

LEWIS SCHNEIDER, who made the tools for making the catch and saw said catches, confirms Hilbrecht (p. 139, Q. 7, 8, 9, 10, 24).

CHARLES DEHNER shows that when he bought Mr. Hilbrecht out, in 1867, large numbers were on hand (p. 141, Q. 5, 6, 7, 8, 9, 10, 11).

CHARLES M. SHUTZ, the complainant's *own witness*, confirms the statement both as to one of the articles and as to date, 1864. (Complainant's proofs, p. 40, Q. 6, 7, 8, 9, 37, 38, 39.)

This use by Hilbrecht, though limited in amount, was not an "experiment" hidden from the public, for these goods were *sold* and passed into the hands of his *customers*. (p. 136, Q. 33, and *complainant's*, p. 40, Q. 13.)

Second Point. — **The complainant's patent is void, because the thing claimed was not invented by him, but was seen by him abroad, and was surreptitiously and unjustly embodied by him in a patent in this country.**

We have already considered the proofs on the subject of the well-known use of the invention in question in England, long prior to the date of complainant's alleged invention. (See evidence of Messrs. Fisher, Ditzes, Phillips, Griffiths and Sperling, above referred to.)

The question now presents itself: Was such foreign use of the invention known to the complainant?

The complainant resided in England during the years 1862 and 1863. (Complainant's proof, p. 12, X-Q. 38.) He worked at bag-making while there for Vogel Brothers, Bergman & Co., and Moritz Wolfski, and on his own account (X-Q. 38).

Now, this invention was at that very time well known and largely in use abroad, and it is well-nigh incredible that it should not have been known to the complainant. It at least, throws upon him the burden of assigning some credible reason which shall account for his pretended ignorance of this well-known fact. This he has not done. He has contented himself with a simple denial of knowledge. The worth of this we shall consider hereafter.

We may well add that this proof is enough. A man cannot be permitted to deny that he knew of an article in such public and notorious use.

But the defendants have not stopped with showing the *general* knowledge of this invention among the bag trade in England. They follow up the plain presumption of fact, that a man who works at a trade is acquainted with the general knowledge of his trade, and show that Roemer did in fact know, when in England, of this very invention he now claims as his own.

Samuel Phillips testifies that he worked with Roemer at Moritz Wolfski's, in Newgate street, London, and that at that time there were in use at said Wolfski's, just such bag-catches as are now patented by Roemer (p. 78, Q. 20 to 22).

He testifies to this with all reasonable certainty (Q. 29, and p. 85, Q. 143 to 145), and as to Roemer's knowledge of these catches, he says: "He could not help seeing them, as he was there" (Q. 30), and even as to the catches in other places than Wolfski's, he says: "Those who have been in England during those years were obliged to know" (p. 79, Q. 32) of their use.

Mr. Phillips is a Prussian, who had been only six weeks in this country at the time of his testimony (Q. 2). He has no interest whatever in the suit or in the parties, and it is impossible to believe that he speaks anything except the truth. His testimony is marked by some foreign idioms in expression, but commends itself as thoroughly correct.

His presence in England at about the time referred to is confirmed by Mr. Sperling (p. 86, Q. 9 to 12) and by Mr. Briggs, the complainant's witness (p. 21, Q. 19).

Mr. Phillips makes an error as to the date of working with Roemer, in the early part of his deposition (p. 77, Q. 4, 10, 11, 12), but he corrects this of his own accord further on (p. 83, Q. 110 to 115, and p. 84, Q. 125, 126).

To do away with the strong presumption that Roemer, when in England, knew of what was common to his trade, and to contradict the direct evidence of Mr. Phillips, we have only the oath of the complainant, Roemer, vehemently denying his fraud. But if he be a man who will surreptitiously obtain a patent for an invention well known to him abroad, he will certainly deny that he has done so. His oath, unless corroborated by other circumstances, can be considered as of but little weight.

Judge Nixon in his opinion admits that his evidence is "unsatisfactory."

What corroboration have we? *Nothing.* Thomas Briggs, the complainant's witness is called to refute Mr. Phillips. What does Mr. Briggs swear to? Why simply that he was in the employ of Moritz Wolfski in 1869, (p. 20, Q. 6, 7, 8,) *not in* 1862, *or* 1863, and then *not* that Wolfski did *not* use catches such as Roemer has patented, but that he then *did* use them. (Q. 12.)

Now, how does the fact that in 1869 Mr. Wolfski *did* use the catches in question, prove that he did *not* use them in 1862 and 1863—the opposite, if any, is the proper inference.

Again it is said that Briggs shows by his meeting with Mr. Phillips at Frankenburgh Bros., that Phillips was mistaken in the statement that he worked at Wolfski's at the same time with Roemer, because he was at Frankenburgh's in 1865.

But it will become apparent, on consulting any work which gives the date of the Briggs-Muller trial, by which Mr. Briggs fixes his dates (p. 21, Q. 19–21,) that the trial occurred in 1864, and not in 1865 or 1866.

Besides this, it is very evident that no conclusions adverse to Mr. Phillips' narration are to be drawn from comparison of the dates he gives, or the length of time that he states he worked for the different people he mentions. He himself says his memory for dates is not good, (p. 80, Q. 49,) and it is very evident that this is so, as is often the case with persons whose recollection of facts and circumstances is perfect, (see Mr. Phillips, entire failure of memory as to the date of the Franco-Austrian and Prusso-Danish wars. (p. 80, Q. 44, to 47.)

A strong confirmation of Mr. Phillips' *correctness* in his statement of the fact that he worked with Mr. Roemer at Wolfski's, is the perfect correspondence of their descriptions of the Wolfski building, and the character of the occupants at that time.

Compare Mr. Phillips' account, (p. 85, Q. 133–138,) and Roemer's account, (p. 35, Q. 14–18 to 23.)

Looking then, at the overwhelming probability of Roemer having seen and known of the use of a bag fastening proved to have been so common at the time of his sojourn in London, and coupling it with the statement of Phillips, so strongly incidentally corroborated as it is, it is impossible not to believe that it is true, as claimed by the defendants, that Roemer has attempted to perpetrate a fraud upon the American public, and secure a patent for a thing which was not invented by him.

We think it is not improper to also state that it was orally admitted at the hearing, that Roemer is connected by marriage with Marx, the person who, up to 1861, claimed registration on this article in England—and also that Thomas Briggs, the only witness on the part of complainant who has lived in London, and who is a native of that place, *is not asked* to contradict the proof of the common and public use of this invention abroad, at the time of Roemer's residence there.

Notice also that Roemer's reputation for fairness and veracity in patent matters is largely impeached.

(Schmidt's Ev., p. 128, Q. 13–16; Spier's Ev., p. 131, Q. 6–9; Hilbrecht's Ev., p. 133, Q. 6; Dehner's Ev., p. 142, Q. 17 to 22.)

The witnesses called to "substantiate" Roemer's character are, with one or two exceptions, either workmen or creditors of his.

(See p. 45, Q. 70, and p. 49, Q. 8, 9; p. 59, Q. 54–59.)

See also Mr. Poineer's statement of Roemer's operations in getting out a lock patent in December, 1869, (p. 98, Q. 29 to 40.)

Roemer tries to dispose of this statement of Mr. Poineer's as to his copying his patented lock from a Vienna made bag, by saying, (p. 34, Q. 9,) that he made the invention "about a year previous," and "several weeks later" had the first lock made by a Mr. Schmidt, of Newark, (Q. 9,) but Mr. Schmidt himself is called by the defendant, and shows that this first lock was not made "about a year previous" to the patent or application, but in June or July, 1869, p. 128, Q. 4 to 8.)

As a single instance of Roemer's willingness to "remember" (?) facts according as he wishes them to be, see his extraordinary testimony under cross-examination, in relation to his agreement with Simon Bros., in 1869.

(Compt's proofs, p. 13, Q. 58 to 76.)

Third Point. The patent of the complainant is void, because the invention was previously described in a printed publication.

This point becomes of small importance in view of the other testimony in the cause.

Inherently it is extremely probable from the proved publicity of the catches in England.

From the ready loss, however, of such transitory things as business catalogues, in which this catch has been published, we have been unable to produce the identical publication to satisfy this Court.

(See Ev. of Poineer, p. 97, Q. 4 to 21.

Such then is the evidence in this case. If ever the evidence of want of novelty in a patent case was satisfactory, it is so here. It proved so satisfactory to the learned Judge of the Circuit Court, where this case was originally tried, as to induce him to close an elaborate opinion with the following words:

"After a most careful examination of the testimony of Hill, Taylor, Griffith, Sayers and Doey, and after reasonable allowance for the imperfections of human memory, giving such examination, and making such allowance, from a *strong predisposition in favor of the validity of the Roemer patent,* arising from the *adjudication* of this Court in the case of the said complainant against Samuel Lagowitz, et al., in which the patent was sustained, it seems *impossible to doubt* that the device of the complainant for fastening together the jaws of satchels and travelling-bags was *known* and *used* in this country for *many years* before the patentee claims to have made his invention, and that its use was not a single experiment by an inventor who afterwards abandoned it from its supposed inutility, but was so frequently applied to and used upon travelling bags as to invest the public with the rights to use the device, notwithstanding the patent.

The *evidence sustains* the defence of want of novelty and prior use, and there must be a decree for the defendant." (Trans. of Rec., page 151.)

The question is a pure one of evidence, to be decided by the weight and reliability of the testimony on either side. We are at a loss to imagine what possible grounds for an appeal could have suggested themselves to the complainants, after hearing the evidence and reading the opinion in the Court below.

Fourth Point.—**The complainant's patent is void on its face for want of sufficient invention to support it.**

We have seen by an inspection of the complainant's patent, that he bases his invention on the arrangement of two of the clamps or staples, which he describes upon the frame of a bag.

Now, it is manifest on the face of the patent, and was within common and ordinary knowledge of every one at the date of the patent, that such arrangement required no invention.

The clamps or staples themselves were not Rœmer's invention; they are in the ordinary form of staples, and just such staples have been known frpm time immemorial, and the patentee himself states in the patent that he does "not claim there-"fore the application of clamps or staples broadly." Nor was the patentee the first to fasten clamps to travelling bags, this as we have seen was well known and is expressly admitted in the patent. So as we have seen stress is laid on the strip, and the only thing that is not expressly disclaimed is the arrangement on the top of the bag frame one on each side.

Again, we must note that the position "on top" of the frame is unimportant, for the defendants are sued for infringing the patent by placing them on each *side*, and the particular location is plainly unimportant. Nothing is left, therefore, but the use of two of these staples near the corners, instead of a single clamp or staple in the center.

This is plainly a mere matter of judgment and ordinary knowledge

In the case of a small bag one is ample, with a large bag two are obviously better.

The duplication of these devices and their arrangement, one on each side, is manifestly the work of an ordinary mechanic merely, and no invention is shown to support the patent.

Dunbar *v.* Myers, 4 Otto, 187.

Ffith Point.—The bill was properly dismissed. The Court below did not err in its conclusion upon the evidence submitted. The defendants herein had the same right as the general public, and any person had a perfect right, to manufacture, use and sell the bag-catch alleged by complainant to be exclusive property, under an alleged patent.

It is, therefore, respectfully submitted that the bill was properly dismissed, and that the decree of the Court below should be affirmed, with costs.

FREDERIC H. BETTS,
Counsel for Respondents.

Points in Reply to Brief of Appellant.

The first place is given in the appellant's brief to an argument that a certain agreement entered in between the plaintiff and three (*not all*) of the defendants acts as an estopel, and prevents them from setting up the invalidity of the patent.

An inspection of the agreement (p. 19) is a sufficient answer to the proposition. It contains no covenants or admissions of any kind which can be construed into an estopel.

Curtis on Patents, 3d ed., sec. 217.

But besides this it may be noted that,

1. The suit is not one on the contract but is one of tort for alleged infringement. If plaintiff had relied on the contract as binding he would have sued on it ; instead, he waives the contract, and sues for the alleged tort.

2. The agreement is not mentioned at all in the pleadings ; if an estoppel had been relied upon it must have been duly pleaded.

> "*The Court can no more take notice of*
> "*what is proved but not alleged, that it can*
> "*of what is alleged and not proved.*"

Blandy v. *Griffiths*. 3 Fish 614

3. The agreement is manifestly not not to infringe the patent but merely "not to manufacture or use the said clasp or catch manufactured by the said Stevens, Roberts, & Havell." This catch is one of peculiar form and was put in evidence as defendants' Exhibit No. 1 [p. 18, q. 79]. It was considered as expressly interfering with Roemer's patent which he calls his second patent (which is not the one in suit.) Roemer expressly says (p. 14, q. 59) that the agreement was intended to release the defendants "only on the second patent." although the agreement itself seems to relate only to the first one. Altogether, complain-

ant's evidence in regard to it is extremely conflicting and unsatisfactory; and it is plain that he hardly knew what he had agreed to himself, much less that he relied upon the agreement as of any force against the defendants.

4. The brief of the appellant, p. 3, shows that the defendants were manufacturing the catch now complained of in "1867 or 1868," yet notwithstanding that fact, the agreement of 1869 says nothing about the catch now complained of, but is limited expressly to catches like Defendant's Exhibit No. 1, made by a particular maker.

The second part of the appellant's brief consists of the criticism of the evidence of defendants' witnesses Hill and Taylor. We have already treated of this evidence in the former brief, and only say now that there is no contradiction in the answers of Mr. Taylor, quoted on p. 6, appellant's brief. In the first [a. 141, p. 70] he was speaking of knowing of the use by manufacturers of bags, of the catch in question as a regular catch in his business. In his statement of what Mr. Hill did in putting on the catches in question he expressly says that they were put on only in the case of repairs.

Hill's statement, also quoted (p. 6.), that he did not know how many of the fastenings in question he had made is very natural. A man who had put on these fastenings, and seen them put on in his shop years ago, could not, of course, tell how many of them were made. But Mr. Taylor specifically remembers a particular instance, to wit, for a gentleman at the Irving House in Broadway (p. 64, q. 33 to 36).

Again: The statement that doubt is cast on the evidence of these witnesses, because none of the bags in question are produced, is almost too puerile to mention. The witnesses expressly state that they put on these catches for customers in the ordinary course of business, and delivered the bags to such customers. It is not to be expected that years afterwards they could produce those bags.

Again: It is urged that this invention, "as "soon as it was brought out by this com"plainant was at once eagerly accepted by the "entire trade;" and hence it is argued that it must have been a novelty with him. But of this assertion there is not a scintilla of proof. It is, of course, true that such fastenings have been largely used, and it is only natural in view of the fact that they are the simplest and most obvious kind of fastenings, and have been known, as we have shown both abroad and in this country for many years. The fact that people did not commence to cast them out of metal until ten or fifteen years ago in this country, does not prove that they had not been long previously made in this country out of wire, as testified to by so many witnesses. The Q. 117 in Mr. Taylor's evidence, which was quoted on p. 7 of appellant's brief, with the intention of conveying the impression that he was uncertain as to the character of the fastenings which he used when in Mr. Hill's employ, and saw on foreign made bags, is completely explained in the answers *immediately following it;* and those answers ought not, in justice to the witness, to have been omitted in the brief.

The statement that Hill's books do not state exactly what kind of repairs he put on the bags during the period about which he was testifying hardly needs notice. Of course the particular form of fastening or the particular kind of repairs would not be specified in a tradesman's book. The criticism at the foot of p. 8 upon the defendants is most unjust, and to attempt to impeach them by reference to an opinion in another case in which they were not parties is certainly a novelty in the law, and the opinion does not justify the criticism.

The quotation of cases showing that where doubts exist as to the prior use of an invention such doubts are to be resolved in favor of the patent are all well enough; but they are hardly applicable to this case where the evidence is entirely uncontradicted and unimpeached, and where the Judge in the Court below, though confessing a strong prepossession in favor of the patent, expressly states that the defence of prior use is proved beyond any reasonable doubt.

Criticism on the evidence of Mr. Griffith is equally futile. The statement that the "bag" which he mentions, and which bear the fastenings in question, might not be a traveling bag is hardly fair. The question [q. 2, p. 94] expressly called the attention of the witness to "travelling bags," and all his answers evidently related to that class of bag. The context is sufficient to show this without going into details. It is plain that the defendants' counsel so understood it at the time, for in x-q. 32, in referring to the bags in question, he speaks of them as travelling bags. The attempt to show a discrepancy in the dates of the wiitness is caused by a misprint in the record. The record speaks of his having purchased a bag in London in 1853; the proper date was 1858. This is made evident by reference to the opinion of the Court (p. 148, f. 314), and is expressly stated in answer to X Q. 29. The attempt to fasten a contradiction upon the witness, based on such an evident misprint, is therefore unjust.

The argument against the evidence of the the witnesses Sayres and Doxey, is based on the ground that no notice was given of their examination. We suppose that this means that their names were not mentioned in the original answer; but the answer was amended *without objection* by the decretal order [p. 151] *nunc pro tunc*, as of the day of filing the same.

This cured any defect of that kind, and, as plainly held by the decision of the court, the omission to object to the witnesses at the time of their examination waived the defect. If the objection had been made when the witnesses were called, the defendant would have immediately applied for an amendment of the answer; but as no objection was made, the witnesses were examined and the answer afterwards amended *nunc pro tunc*. It would be most unjust to a defendant to allow him to go to the expense of examining witnesses on a point without any objection whatever, and then when the testimony was all taken, relying upon the silence of the opposite party, and the case printed for hearing, and when it was too late to retake the testimony, to allow an objection then raised to a formal matter of that kind to be of force.

This Court has affirmed the propriety of a liberal rule of allowing amendments, especially in a case like this where there is no objection and no injury to the complainant.

Terse *v.* Huntington, 23 How., 2.

If complainant had wished for further time for the examination of the witnesses he would have asked for it, and if he had desired to rebut their evidence he had unlimited time to do so before the hearing.

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Oct 17 1877
Jones 8-221

No. 5 - Original

PETITION FOR MANDAMUS

TO THE

Judge of the Fifth Judicial Circuit

OF THE

UNITED STATES,

Presiding over the United States Circuit Court for
the Middle District of Alabama,

AND

ARGUMENT FOR PETITIONER.

PHILADELPHIA
BAR
ASSOCIATION

EX PARTE:

The South and North Alabama Railroad Co.

SAM'L F. RICE,
THOS. G. JONES,
Counsel for Petitioner.

9

National Republican Printing House.

PETITION FOR MANDAMUS

TO THE

JUDGE OF THE FIFTH JUDICIAL CIRCUIT

OF THE

UNITED STATES,

Presiding Over the United States Circuit Court for the Middle District of Alabama.

EX PARTE:

The South and North Alabama Railroad Company.

To the Honorable the Supreme Court
of the United States of America:

The petition of the South and North Alabama Railroad Company respectfully showeth:

1. The South and North Alabama Railroad Company is a corporation, created, organized, and existing under and by virtue of the laws of Alabama.

2. The South and North Alabama Railroad Company is a party to the causes of Samuel A. Strang *vs.* The Montgomery and Eufaula Railroad Company, the South and North Alabama Railroad Oompany *vs.* The Montgomery and Eufaula Railroad Company *et al.*, Mason Young *et al. vs.* The Montgomery and Eufaula Railroad Company *et al.*, which said causes were tried and heard together, and a transcript of the record of the proceedings in said causes (on the appeal

of Mason Young *et al.* from a decree rendered in favor of the South and North Alabama Railroad Company by the Circuit Court of the United States for the Middle District of Alabama) is now on file in this Honorable Court, and the South and North Alabama Railroad Company respectfully refers to said transcript of the proceedings in said causes, and prays that the same may be deemed and taken as part of this petition for the better understanding of the complaints and grievances hereinafter set forth.

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3. On the 10th day of May, 1872, Samuel A. Strang filed his bill of complaint in the District Court of the United States for the Middle District of Alabama (then possessing Circuit Court power) against the Montgomery and Eufaula Railroad Company, and Thomas Pulliam, William Fowler, (trustees in a certain mortgage or deed of trust, hereinafter mentioned, executed by said M. and E. R. R. Co.,) and James R. Connoly, a judgment creditor of the defendant corporation.

Strang alleged in his bill that he was the holder of certain bonds executed and issued by the Montgomery and Eufaula Railroad Company on the first day of June, A. D. 1870; and that on the same day, to secure the payment of the same and interest thereon, said Montgomery and Eufaula Railroad Company executed a mortgage or deed of trust on all its property to defendants, Pulliam and Fowler. This mortgage or deed of trust, which is made an exhibit to the bill, recites that it is "subject only to the prior lien of $1,280,000, of bonds issued by said Montgomery and Eufaula Railroad Company, payable March 1, 1886; said prior lien having been issued in pursuance to and in accordance with an act of the General Assembly" * * * "to establish a system of internal improvements in the State of Alabama," approved February 19, 1867, and amendatory acts approved August 7, 1868, and September 25, 1868.

Strang alleged that by virtue of said acts the said bonds amounting to $1,280,000, "which were endorsed by the State of Alabama, constitute a lien on said railroad, which your orator, (Strang) acknowledges and avers to be a prior lien to the mortgage under which the bonds held by himself and his associates, as hereinafter expressed, were issued."

Strang alleged that said Montgomery and Eufaula Railroad Company had made default in the payment of interest; that it was insolvent, &c. He therefore prayed the appointment of a receiver, and that the railroad, &c., should "be sold absolutely, and the proceeds of such sale be distributed among the parties having liens thereon, according to their respective priorities, to be established by decree in this cause."

A receiver was appointed and took possession of the property of the defendant corporation. It answered the bill, and decrees *pro confesso* were taken as to the other defendants. The South and North Alabama Railroad Company was not made a party, and no mention was made of it, or of any claim or lien set up by it.

4. On the 23d day of April, 1873, the cause was transferred by operation of law to the Circuit Court of the United States at Mobile.

That court, on the petition of the South and North Alabama Railroad Company, filed on the 17th day of January, 1874, allowed it to become a party defendant in the Strang suit, and also to file a cross bill in that suit. The South and North Alabama Railroad Company accordingly made itself a party defendant, answered, and also filed its cross bill.

In its answer, as well as in its cross bill filed in that suit, the South and North Alabama Railroad Company set up and insisted that long prior to the issue of any of the bonds held by Strang, or any bonds purporting to be endorsed by the state, the Montgomery and Eufaula Railroad Company was indebted to the State of Alabama for a loan of thirty thousand dollars of what is known as the "three per cent. fund," (a trust fund as to which and said loan thereof the state was the trustee, and of which the South and North Alabama Railroad Company, by legal transfers, became the ultimate *cestui que trust* and owner,) to secure the repayment of which, with interest thereon, said Montgomery and Eufaula Railroad Company, did, on the 16th day of May, 1860, execute and deliver to the State of Alabama a mortgage or deed of trust upon its railroad and property which was recorded; that five years afterwards, when the loan fell due, said Montgomery and Eufaula Railroad Company, in pursuance of an act of the legislature extending the time of payment, (upon certain conditions which were complied with,) did make, execute and deliver to the State of Alabama on the 27th day of February, 1866, another mortgage upon all its roads and property to secure payment of said loan and interest, which was duly recorded before the issue of any of said bonds; that the said The South and North Alabama Railroad Company was the owner and holder of said debt and the mortgage to secure the same—the various transfers, and acts of the legislature, by which it derived title being fully set out and disclosed—and that said debt and the mortgages given to secure the same, constitute a first and prior lien upon the road and property of the Montgomery and Eufaula Railroad Company, superior to, and having a preference over, all other liens and incumbrances, especially over the bonds and mortgages set forth and mentioned in the bill of complaint filed by Strang.

The cross bill prayed that the mortgages held by the South and North Alabama Railroad Company be declared a first and prior lien upon the road and property of the Montgomery and Eufaula Railroad Company, and that its sale be decreed for the purpose of paying said debt.

5. On the 1st day of April, A. D. 1875, Mason Young and others filed their bill of complaint in the Circuit Court of the United States for the Middle District of Alabama against the Montgomery and Eufaula Railroad Company, the South and North Alabama Railroad Company, and against Thomas Pulliam, William Fowler, and A. J. Lane.

The complainants in the Young bill averred that they are holders and owners of certain bonds, two hundred and fifteen in number, of $1,000 each, which, together with those held by other parties unknown to them, amounted in the aggregate to $1,280,000; that said bonds were issued by the Montgomery and Eufaula Railroad Company, and endorsed by the State of Alabama, through its Governor, under and in pursuance of the provisions of an act to establish a system of internal improvements in the State of Alabama, approved February 19, 1867, and various amendments thereto, which are referred to. It is alleged that $500,000 in amount of the $1,250,000 of bonds held by persons other than complainants were not properly endorsed, &c.

The complainants in the Young bill averred that the Montgomery and Eufaula Railroad Company never executed any mortgage to secure said endorsed bonds; that the State, by virtue of said endorsement, "became invested, under the statute, without any deed from the company," with a first lien on the road and other property of the Montgomery and Eufaula Railroad Company to secure payment of said bonds.

They expressly denied that the mortgages held by the South and North Alabama Railroad Company had a preference or priority over that asserted by them.

This bill averred the insolvency of the Montgomery and Eufaula Railroad Company; its failure to pay interest on the bonds held by complainants; its failure to set aside any portion of its earnings, in accordance with the provisions of the internal improvement laws, for the benefit of the State, &c.

The bill prayed that complainants, and others similarly situated, who will come in and contribute, &c., "be subrogated to the lien and rights of the State of Alabama, in and upon said railroad, * * * that the lien be established and foreclosed, * * * that the road and property be sold, and the proceeds thereof applied to the payment of complainants' bonds, &c.

The State of Alabama was not made a party to the bill, and did not appear. The South and North Alabama Railroad Company duly answered the bill, &c.

In June, 1876, the Strang suit, including cross bill, was duly transferred to the United States Circuit Court for the Middle District of Alabama.

6. Afterwards the following proceedings were had in the several causes: By decree made December 22, 1876, which which recites that the original and cross cause in the Strang suit, and the cause of Mason Young *et al. vs.* The Montgomery and Eufaula Railroad *et al.*, "were duly submitted, upon consent and agreement in open court of the respective solicitors of the several parties, that each of said causes should be then submitted for decision * * * upon the question whether, under the pleadings, proof, and admission of the respective solicitors, * * * the mortgage claim and lien of the South and North Alabama Railroad Company *was, and still continues to be*, paramount and superior to the respective claims and liens asserted and disclosed in the pleadings of the several other parties to said respective causes."

The Court decided that question in the affirmative, and decreed that the claim or mortgage due to the South and North Alabama Railroad Company constituted a first and prior lien on the Montgomery and Eufaula Railroad Company; was still due and unpaid, and amounted to $61,212.00, and "that the entire decree shall be and operate as the decree of this court in each of the above mentioned causes." All further orders reserved.

A true copy of said decree and of the admissions of the solicitors is hereto attached, marked Exhibit "A," and prayed to be taken as part of this petition.

7. On the 6th day of June, A. D. 1877, the Court made a decree in these several causes of Strang *vs.* The Montgomery and Eufaula Railroad *et al.;* Mason Young *vs.* The Montgomery and Eufaula Railroad *et al.*, and the cross bill filed by the South and North Alabama Railroad, which the Court heard together, the decree then rendered "*to apply to each and all of them.*"

By this decree a sale of the entire property of the Montgomery and Eufaula Railroad Company was directed on the first Monday in October following, and the master commissioners appointed to make the sale were required to sell for cash sufficient to pay the amount of the decree in favor of the South and North Alabama Railroad Company, and to pay all costs, fees of solicitors, and outstanding receivers' certificates, (which amounts were to be ascertained by reference to the master within thirty days from the date of the decree,) and providing that the balance of the purchase money might be paid in first mortgage bonds of the Montgomery and Eufaula Railroad Company, endorsed by the State of Alabama, and mentioned in the pleadings in the causes. All further orders and decrees were reserved until the next term, to which the commissioners were to report their acts in the premises.

A true copy of this decree is hereto attached, marked Exhibit "B," and prayed to be taken as part of this petition.

8. On the 2d day of July, 1877, Young *et al.* applied for and obtained an appeal and *supersedeas* of this decree, upon giving bond, &c., which was duly approved, as more fully appears in said transcript.

9. On the 3d day of July, 1877, the Court made another decree, which recites that "the several causes were again submitted, by consent of the parties," adversely interested, to the South and North Alabama Railroad Company * * * for a decree settling the equities of said several parties, as between each other, and for a sale of the railroad, &c., subject to the claim or lien of the South and North Alabama Railroad Company, "to the end that this litigation, except in so far as it concerns the South and North Alabama Railroad Company may be terminated."

This decree settled the equities of the said parties adversely interested to the South and North Alabama Railroad Company, as between themselves; directed a sale of the road and property; directed the special master to report the amount due on receivers' certificates, costs, counsel fees, &c.; directed that the sale be made subject, on confirmation only, to the lien of the South and North Alabama Railroad Oompany, as the same may be finally adjudicated," &c.

A true copy of said decree is hereto attached, marked Exhibit "C," and prayed to be taken as part hereof.

10. On July 3, 1877, the South and North Alabama Railroad Company, in open Court, applied for an appeal, and *supersedeas* of said decree of July 3, 1877, which the Court refused to grant, on the ground that the South and North Alabama Railroad Company was not, "as matter of law," a party to said decree, and had no right to appeal.

A true copy of said petition for appeal and *supersedeas* is hereto attached, as Exhibit "D," and prayed to be taken as part hereof.

A true copy of said order or decree, denying an appeal and *supersedeas* is hereto attached, and prayed to be taken as part hereof, as Exhibit "E."

The premises considered, your petitioner states that by reason of the refusal of the Honorable the Circuit Court of the United States, for the Middle District of Alabama, (Hon. William B. Woods, Circuit Judge, presiding,) to allow petitioner to appeal from and supersede the aforesaid decree of July 3, 1877, your petitioner is aggrieved, and denied the exercise of a clear right and is without any adequate remedy, unless it be afforded by this Honorable Court, by writ of *mandamus* or other remedial writ.

The premises considered, your petitioner prays that a writ of *mandamus* issue from this Honorable Court, directed to the Hon. William B. Woods, Judge of the Fifth Judicial Court of the United States, and presiding Judge of the Circuit Court of the United States for the Middle District of Alabama, commanding and requiring him, upon petitioner's tendering bond in a sufficient amount, and otherwise complying with the requisitions of law, to allow your petitioner an appeal from, and a *supersedeas* of, said decree hereinbefore mentioned, a true copy of which is attached to this petition as Exhibit "C," and that all such other orders be made in the premises as right and justice may require.

THE SOUTH AND NORTH ALABAMA RAILROAD COMPANY,
By SAMUEL F. RICE,
THOMAS G. JONES,
Its Attorneys.

Exhibit A.

IN THE CIRCUIT COURT OF THE UNITED STATES, FOR THE MIDDLE DISTRICT OF ALABAMA.

In Equity.

SAMUEL A. STRANG ET AL. *vs.* THE MONTGOMERY AND EUFAULA RAILROAD COMPANY ET AL.	Original Bill and Cross-Bills No. 10.

AND

MASON YOUNG ET AL. *vs.* THE MONTGOMERY AND EUFAULA RAILROAD COMPANY ET AL.	No. 2.

Each of the above-mentioned causes was duly submitted at the last term of this court, under and upon the consent and agreement, in open court, of the respective solicitors of the several parties, that each of said causes should be then submitted for decision and decree at that term, or any further term, upon the question whether, under the pleadings, proofs and admissions of the respective solicitors of the parties, the mortgage claim and lien of the South and North Alabama Railroad Company, asserted and disclosed in the answer and cross-bill of that company in the first above-mentioned cause, as well as in the answer of that company in the second above-mentioned cause, was and still continues to be paramount and superior to the respective claims and liens asserted and disclosed in the pleadings of the several other parties to said respective causes.

This important question, thus submitted for decision and decree, after careful consideration and after careful examination of the pleadings, proofs and admissions of the solicitors of the parties, must be and is decided in the affirmative in each of said cases; the reasons for which decision are set forth in an opinion filed in this court, at this term, in the said causes, and here referred to as part hereof.

Upon consideration of the premises, it is ordered, adjudged and decreed by this court that the mortgage claim of South and North Alabama Railroad Company, asserted and disclosed in the answer and cross-bill of the South and North Alabama Railroad Company in the first above-mentioned cause, as well as in the answer of that company in the second above-mentioned cause, was, at the commencement of each of said causes, and still continues to be, paramount and superior to the respective claims and liens asserted and disclosed in the pleadings of the several other parties to said respective causes, and remains wholly unpaid and unsatisfied, and amounts on this day, including principal and interest now due to the South and North Alabama Railroad Company, to the sum of $61,212.

It is further ordered, adjudged and decreed that the South and North Alabama Railroad Company be, and is hereby declared to be, entitled to a priority of payment of said last above mentioned amount out of the proceeds of the property embraced by the mortgages set forth and disclosed in the said several answers and cross-bill of said last-mentioned company, over all other claims or liens asserted or disclosed in the pleadings of any of the said causes; and that this entire decree shall be, and shall operate as, the decree of this court in each of the above-mentioned causes. All further orders are reserved.

JOHN BRUCE, *Judge*.

DECEMBER 22, 1876.

Filed this, the 22d day of December, 1876.

J. W. DIMMICK, *Clerk*.

CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

SAMUEL A. STRANG ET AL.
vs.
MONTGOMERY AND EUFAULA RAILROAD COMPANY ET AL.

AND

MASON YOUNG ET AL.
vs.
MONTGOMERY AND EUFAULA RAILROAD COMPANY ET AL.

In Equity.

It is agreed that the depositions of James H. Young, Fred E. Mather, Charles Hanselt, Achille Nicholas, Mason Young, and George Opdyke, which were taken in the case of Samuel A. Strang *vs.* Montgomery and Eufaula Railroad Company et al., may be used and read in evidence on the trial of both of these cases, the same as if taken in both cases. It is further admitted that the complainants in the bill of Mason Young et al. were at the time of filing the said bill and still are the *bona-fide* owners and holders of the first mortgage bonds—as they are called—issued by the said Montgomery and Eufaula Railroad Company, respectively, as stated in the ninth paragraph of the bill and Exhibit 2 to the bill; that they purchased said bonds from said railroad company at ninety cents on the dollar and upwards; those which purport to be endorsed in 1867 were purchased by the holders of them in 1868; those which purport to be endorsed in 1869 were purchased by the holders of them in 1870, and those which purport to be endorsed in 1871 were purchased by the holders of them in the same year; and that the statements filed by the complainants and contained in the report of the master in this case of Mason Young et al. is to be taken and considered as evidence in the case. The production of the original bonds is waived, and it is agreed that Exhibit No. 1 to the bill is a correct copy of said bonds, excepting the numbers thereon and the coupons attached, which fall due as stated in the bill, and that paragraph 7 of the bill sets out a correct copy of the endorsement on each of said bonds, which endorsement is signed by the person who was at the date thereof Governor of the State of Alabama, and in his capacity as such Governor.

It is further admitted that the coupons for interest on the bonds several'y held by complainants, which fell due on September 1, 1872, were paid with money borrowed by A. J. Lane as receiver in said Strang case from George Opdyke & Co. and others under orders of the court in said Strang case, as shown by the record in said case, and that receiver's certificates were issued by said A. J. Lane as received for the money so borrowed to pay said interest on said bonds; and that a large part of the certificates so issued are still outstanding and unpaid.

It is further admitted that the sworn statement of H. M. Bush or the proper employee of the time and terms of transfer of the 3 per cent. mortgage to the South and North Alabama Railroad Company may be used and read in evidence; but it is admitted that the complainants, at the times they respectively purchased said bonds, had no knowledge or information of said mortgage further than they are charged with notice by the recording of said mortgage and the acts of the General Assembly of Alabama.

It is further admitted that the facts as averred in the several answers and the cross bill of the South and North Alabama Railroad Company in any way relating to the 3 per cent. fund therein mentioned, the loan of $30,000 thereof to the Montgomery and Eufaula Railroad Company, the extension of said loan by the State of Alabama, and the execution and recording of the several mortgages and bonds for or on account of said loan, copies of which, or some of which, are attached to said answers or cross bill, are true as therein averred.

And also all the facts alleged or averred in said answers or cross bill relating to the beginning of the grading and construction, to the construction, to the war obstacles to the construction, to the completion and time of completion of said railroad from Decatur to Montgomery, or from Decatur to Calera or Limekiln, or the point where said railroad from Decatur intersects the said railroad from Selma to Rome and Dalton, (which is sometimes called the Selma, Rome and Dalton Railroad,) or to changes of name or different names of any of said railroads are true and hereby admitted to be true. It is further admitted and agreed that the several acts of the General Assembly of Alabama mentioned in said answers and cross bill may be considered as part of the evidence in these causes; and that the South and North Alabama Railroad Company was the owners of said mortgages and bonds executed for and on account of said loan of said $30,000 of said 3 per cent. fund; and that said 3 per cent. fund, and that said last-named campany (whose charter is admitted as part of the evidence in this case) became the owner of said mortgages and bonds, as stated in said answer and cross bill; and that said bonds and mortgages were actually delivered into the possession of the said South and North Alabama Railroad Company on the 9th day of October, 1869. This agreement and consent is made and entered into at this the May term, 1877, of said Circuit Court, and on the 2d day of June, 1877.

And it is further admitted that the facts herein above admitted were admitted in writing in an agreement of counsel of the respective parties in said several causes, made at the May term, 1876, of said Circuit Court, pursuant to which agreement said causes were then submitted for the purpose mentioned in the decree rendered by said Circuit Court, Hon. John Bruce presiding, at the November term, 1876, of said Circuit Court. Said agreement in writing made at the May term, 1876, as aforesaid, has been lost or mislaid, and this agreement is intended as a substitute therefor, as well as admissions to be used in the final trial of said cases. It is not intended by these admissions to admit any conclusions of law averred in any of the pleadings, or any allegation of priority claimed by any party in any of the pleadings in either of said causes, in law or in equity; and it is not intended by this agreement to consolidate said cases, or to consent that they be tried together, or to effect in any way the force and effect of said decree rendered at the November term, 1876, of said Circuit Court.

D. S. TROY,
Solicitor for Montgomery and Eufaula R. R. Co.
A. J. LANE, *Receiver.*
RICE, JONES & WILEY,
Solicitors for South and North Alabama R. R. Co.
DAVID CLOPTON & J. T. HOLTZCLAW,
Solicitors for Complainants
in bill of Mason Young and others.
E. H. GRANDIN,
Solicitor for Samuel A. Strang, Complainant, &c.

June 2, 1877.

Filed and entered this 6th day of June, A. D. 1877, at 10:10 o'clock A. M.

J. W. DIMMICK, *Clerk, &c.*

Exhibit B.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

In Equity.

SAMUEL A. STRANG *et al.* *vs.* THE MONTGOMERY AND EUFAULA RAILROAD COMPANY *et al.*	Original and Cross Bills. No. 10.

In the Court above-mentioned.

In Equity.

MASON YOUNG *et al.* *vs.* THE MONTGOMERY AND EUFAULA RAILROAD COMPANY *et al.*	Original Bill. No. 10.

Each of the above-mentioned causes, including the cross bill of the South and North Alabama Railroad Company, filed in the cause first above-mentioned, came on to be further heard at the present May term (1877) of said Circuit Court of the United States for the Middle District of Alabama, upon the application of complainant in said cross bill for an order to sell the property embraced and included in the mortgage, a copy of which is set forth as Exhibit B to said cross bill, and out of the proceeds of the sale to pay the debt mentioned in and secured by said last-mentioned mortgage; and upon the application of the several complainants in said several original bills to order a reference to ascertain the amount of the costs, fees of solicitors, and outstanding and unpaid receiver's certificates in these several causes. The parties did not consent that the causes should be thus heard together, but the Court deemed it proper thus to hear them together, and did so hear them, and this decree is to apply to all of them and to each.

The testimony introduced by each of the parties is set out in a note of the testimony, taken and filed by the clerk of this court, in each of said causes, including a written agreement as to the facts signed and executed by the solicitors of the several parties to these causes, and filed in this court and in these causes.

Whereupon, after argument by the solicitors of the several parties, it is ordered, adjudged, and decreed by the court that all of the railroad of the Montgomery and Eufaula Railroad Company, with its appurtenances and franchises, together with all its grading and local work; its rolling stock, including locomotives; its real estate, and its warehouses, workshops, engine-houses, and all fixtures of whatever nature mentioned or embraced in said mortgage last herein above-mentioned shall be sold on the first Monday of October next (1877) in front of the post office, in the city of Montgomery, in the State of Alabama, at public auction, to the highest bidder, by J. W. Dimmick and R. W. Healy, who are hereby appointed master commissioners to make such sale as is herein ordered; that the purchaser at such sale, as soon as he is declared to be the highest bidder or purchaser, shall pay to said master commissioners, in the currency or coin of the United States, a sum or amount sufficient to pay off the said mortgage-debt mentioned in and secured by said last above-mentioned mortgage, the amount of which was ascertained by the decree of this court in said several causes rendered at the last term of this court, and interest on that amount from the date of said last-mentioned decree, and also sufficient to pay off the amount of the costs, fees of solicitors, and outstanding and unpaid receiver's certificates in these causes, which last-mentioned amount shall be ascertained by a reference, to be held by the clerk of this court, as master, within thirty days from the date of this decree. The balance of the purchase money bid by such purchaser may be paid in first-mortgage bonds, indorsed by the State of Alabama, and mentioned in the pleadings in these causes. Out of the currency or coin paid by the purchaser the master commissioners shall first pay the costs, receiver's certificates, and solicitor's fees, to be ascertained as aforesaid; next, the said mortgage debt, to the South and North Alabama Railroad Company, which has been ascertained as aforesaid, and interest thereon from the date of said decree rendered at the last term of this court. Notice of the time and place and terms of said sale shall be given by said master commissioners in the *Montgomery Advertiser* and in the *New York Tribune*, at least once a week for sixty days before the sale.

It is further ordered, adjudged, and decreed, that in case the purchaser at such sale shall fail to comply with the foregoing terms of sale, in any material respect, the said master commissioners are hereby empowered to proceed, without further adversisement, or notice, or delay, to offer said railroad and other property, and to adjourn the sale from day to day and from time to time until they make a sale thereof to a purchaser who does comply with the terms of sale hereinbefore set forth. The said master commissioners must report their acts and doings to this court at its next term. All further orders and decrees are reserved until the next term of this court.

JOHN BRUCE, *Judge*.

June 6, 1877.

Exhibit C.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

SAMUEL A. STRANG
vs.
MONTGOMERY AND EUFAULA RAILROAD COMPANY ET AL.

MASON YOUNG ET AL.
vs.
MONTGOMERY AND EUFAULA RAILROAD COMPANY ET AL.

In Equity.

An appeal having been taken to the Supreme Court of the United States from the decree rendered at a former day of this term upon the cross-bill of the South and North Alabama Railroad Oompany, filed in the cause first above mentioned, and its answer in the cause last above mentioned, by which decree the Mortgage held by said South and North Alabama Railroad Company, and set up in said cross-bill and answer, is declared to be a first lien upon the railroad and property of the Montgomery and Eufaula Railroad Company, and said decree having been superseded by the execution of a *supersedeas* bond, which has been duly approved, and all proceedings under said decree thereby suspended, said several causes are now again submitted, by consent of the parties to each of the said causes, who have appeared by counsel, whose interests are adverse to the claim and mortgage of the South and North Alabama Railroad Company, namely, Samuel A. Strang, complainant, and the Montgomery and Eufaula Railroad Company, defendant, and Achille Nicholas and Nicholas Lespanassee, intervening creditors, in the cause first above mentioned, and Mason Young and others, complainants, and the Montgomery and Eufaula Railroad Company, A. J. Lane, receiver, and A. J. Lane, individually, defendants in the cause last above mentioned, for a decree settling the equities of said several parties as between each other, and for a sale of the railroad franchises and property of the Montgomery and Eufaula Railroad Company, subject to the lien and claim of the said South and North Alabama Railroad Company, to the end that this litigation, except in so far as it concerns the said South and North Alabama Railroad Oompany, may be terminated; and it appearing to the Court that the parties to this submission are entitled to a decree as to their several equities as between each other, said submission of said severel causes by the consent for the purposes above stated is allowed.

And upon consideration of the pleadings in each of said causes, and of the evidence on file in each of them, including the written agreement and admissions of solicitors and the statutes therein referred to in each of them, and by consent of the parties to this submission, it is ordered and decreed that said two several causes be, and the same are hereby, consolidated into one suit; and upon further consideration of the pleadings and evidence in said consolidated causes, it is ordered, adjudged, and decreed that said Samuel A. Strang and all others, holders of the second-mortgage bonds of the Montgomery and Eufaula Railroad Company, secured by the mortgage of said Montgomery and Eufaula Railroad Company to Thomas Puliam and William Fowler, trustees, bearing date the 1st day of June, 1870, are entitled to and hold a lien upon all the property, rights, and franchises of the Montgomery and Eufaula Railroad Company, superior to the lien or claims of all judgment creditors, or creditors otherwise unsecured of said Montgomery and Eufaula Railroad Company, and that they are entitled to a foreclosure of said mortgage, and to a sale of the property thereby conveyed to said trustees for the payment of the bonds thereby secured. But it further appears from said mortgage that the lien thereby secured to the holders of said second-mortgage bonds on the railroad franchises and property of the Montgomery and Eufaula Railroad Company is subordinate to the prior lien of twelve hundred and eighty first-mortgage bonds of one thousand dollars each, amounting in the aggregate to twelve hundred and eighty thousand dollars, issued by the Montgomery and Eufaula Railroad Company, and endorsed by the State of Alabama, which said first mortgage bonds are secured by a statutory lien and mortgage of said franchises and property; and it further apppearing from the report of J. W. Dimmick, Esq., master, that said first-mortgage bonds are held by Achille Nicholas and Nicholas Lespannassee, intervening creditors aforesaid, and said Mason Young and others, complainants aforesaid, and many other persons, as set forth in said master's report, it is thereupon further ordered, adjudged, and decreed that said Achille Nicholas, Nicholas Lespanassee, Mason Young, and all others, holders of said first-mortgage bonds so issued as aforesaid by said Montgomery and Eufaula Railroad Company, and endorsed by the State of Alabama, are entitled to and hold a lien upon all the railroad franchises and property of said Montgomery and Eufaula Railroad Company paramount and superior to the lien or claim of said second-mortgage bond holders and all others subordinate to them, and that said holders of first-mortgage bonds are entitled to a foreclosure of the statutory lien and mortgage by which the same are secured, and to a sale of said railroad franchises and property for the payment of said bonds and the coupons for interest due thereupon, and that the holders of said first mortgage bonds and coupons are entitled to share in the proceeds of such sale *pro rata.*

It further appearing that certain receiver's certificates, issued by A. J. Lane, receiver of said Montgomery and Eufaula Railroad Company, under previous orders in said causes, and that the costs and solicitors' fees in said causes are outstanding and unpaid, it is ordered that the amount so due on said receiver's certificates and for costs and solicitors' fees, and the costs of making the sale hereinafter ordered, shall be first paid from the proceeds of the sale of said railroad franchises and property of said Montgomery and Eufaula Railroad Company, and it is referred to J. W.

Dimmick, Esq., as a special master, to ascertain and report by the 1st day of October next, the amount due on said receiver's certificate, the costs of said causes remaining unpaid, and reasonable compensation to the several solicitors who are entitled to compensation out of the funds. Thereupon it is ordered, adjudged, and decreed that all of the railroad of the Montgomery and Eufaula Railroad Company, and all the franchises, rights, privileges, and immunities of said company, and all the property of said company, including road-bed, right of way, depots, work-shops, tools, and implements, warehouses and real estate of every description, together with all appurtenances thereunto belonging, its rolling stock, locomotives, cars, and all other property, real, personal, or mixed, of any kind or description whatever, shall be sold on the second Monday in November next, (1877,) at the Artesian Basin, in the city of Montgomery, in the State of Alabama, at public auction, for cash, to the highest bidder, by J. W. Dimmick and Robert W. Healey, who are hereby appointed master commissioners to make said sale, subject, however, to the claim of the South and North Alabama Railroad Company, as hereinafter stated.

Said master commissioners shall give notice of the time, place and terms of sale by advertisement in *Montgomery Advertiser*, a newspaper published in the city of Montgomery, Alabama, and in the *New York Tribune*, a newspaper published in the city of New York, once a week for sixty days; and from the proceeds of such sale shall be first paid the costs and expenses thereof, and the costs of said several causes then unpaid, and the amount due on said receiver's certificates and for solicitor's fees, and the residue shall be distributed *pro rata* amongst the holders of said first-mortgage bonds and coupons, until the same are satisfied in full, if sufficient therefor; and in the event such proceeds shall be more than sufficient to pay in full said first-mortgage bonds and coupons, the residue will be brought into court to abide such order as may be made concerning the same at the next term.

It is further ordered that the purchaser may pay the amount bid in the several claims entitled to share in the proceeds of such sale, in the order and to the extent to which the same are entitled to be paid, as above provided.

And on the purchaser's compliance with the terms of sale and the confirmation thereof by this court, said master commissioners shall execute to the purchaser a conveyance of all the property, rights and franchises so sold, which conveyance said master commissioners shall first prepare and submit to the Court for its approval, and said conveyance, when so approved and executed, it is hereby declared shall vest in such purchaser all the title, both at law and in equity, of all the parties aforesaid in and to all the property, rights and franchises thereby conveyed, subject only to the lien or claim thereon of the South and North Alabama Railroad Company, as the same may be finally adjudicated and determined. And all the rights and equities of the said South and North Alabama Railroad Company in and to the said property, rights and franchises so sold shall be and remain the same, in all respects, as if this decree had not been rendered, the said South and North Alabama Railroad Company not being a party to this submission, and in the opinion of the Court, as matter of law, not a party to this decree, although appearing and claiming to be a party thereto, and the right as a party to object thereto.

W. B. WOODS, *Judge.*

July 3, 1877.

Filed and entered the 3d day of July, A. D. 1877.

J. W. DIMMICK, *Clerk.*

Exhibit D.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

SAMUEL A. STRANG
vs.
THE MONTGOMERY AND EUFAULA RAILROAD COMPANY *et al.*
} In Equity.

MASON YOUNG *et al.*
vs.
THE MONTGOMERY AND EUFAULA RAILROAD COMPANY *et al.*
} In Equity.

To the Honorable the Circuit Court of the United States for the Middle District of Alabama:

The South and North Alabama Railroad Company, one of the defendants to the suit of Samuel A. Strang against the Montgomery and Eufaula Railroad Company, and complainant also in said cause by cross bill, which said causes, together with the cause of Mason Young *et al. vs.* The Montgomery and Eufaula Railroad Company, to which said The South and North Alabama Railroad is a defendant, were consolidated and heard by the Circuit Court of the United States for the Middle District of Alabama as one cause, and in which a final decree was rendered by this Honorable Court on the 3d day of July, A. D. 1877, do hereby pray an appeal from said final decree rendered on the 3d day of July, A. D. 1877, to the next ensuing term of the Supreme Court of the United States, and prays this Honorable Court to allow said appeal, and to fix and determine the amount of appeal bond, and to decree that said appeal bond, when executed in the form and for the amount prescribed and duly approved, shall be and operate a *supersedeas* of said decree above stated, and that a transcript of the record and proceedings had in said causes, as consolidated, be duly certified by the clerk of this court and sent to the Supreme Court of the United States.

THE SOUTH AND NORTH ALABAMA RAILROAD COMPANY,
By RICE, JONES & WILEY.

Filed the 3d day of July, A. D. 1877, in open court.
J. W. DIMMICK, *Clerk.*

Exhibit E.

SAMUEL A. STRANG
vs.
THE MONTGOMERY AND EUFAULA RAILROAD COMPANY *et al.*
No. 10.

AND

MASON YOUNG *et al.*
vs.
THE MONTGOMERY AND EUFAULA RAILROAD COMPANY *et al.*
No. 2.

In Equity.

This day comes into open court the South and North Alabama Railroad Company, a defendant in each of the above-stated causes, and complainant by cross bill in the first-mentioned case, which original cases were consolidated and heard together, as appears from the decree rendered therein on the 3d day of July, A. D. 1877, and prays the court to allow an appeal from said decree to the Supreme Court of the United States, returnable according to law, and also to fix and determine the amount of the appeal bond to be given by said The South and North Alabama Railroad Company to operate a *supersedeas* of said decree, and to decree that said appeal bond when so executed for the amount prescribed and and approved shall operate as a *supersedeas* of said decree; and said motion, having been duly argued and considered by the court, it is ordered and decreed by the court that said The South and North Alabama Railroad Company has no right to give bond to supersede the execution of the same.

It is further ordered and decreed that said motion for the allowance of an appeal and *supersedeas* be refused and denied.

W. B. WOODS, *Judge.*

July 3, 1877.

UNITED STATES OF AMERICA, } *ss:*
MIDDLE DISTRICT OF ALABAMA. }

I, J. W. Dimmick, Clerk of the Circuit Court of the United States for the Middle District of Alabama, hereby certify the foregoing to be true and correct copies respectively of the decree made in the above stated causes on the 22d day of December, 1876; also of the agreement of counsel filed in said causes on the 5th day of June, A. D., 1877; also of the decree made in said causes on the 6th day of June, 1877; and also the petition for appeal and *supersedeas* and order allowing the same; also the decree made in said causes July 3d, 1877. The petition for appeal and *supersedeas* by the South and North Alabama Railroad Company and the order denying the same as the same remain of record and on file in my office.

Witness my hand and seal of said court at Montgomery, in said District, this 6th day of October, A. D., 1877.

[SEAL.] J. W. DIMMICK,
Clerk U. S. Circuit Court for Middle District of Alabama.

ARGUMENT.

The real, if not the only, litigation in these causes is between Strang, who filed his original bill in 1872, the South and North Alabama Railroad Company, which in that suit became a defendant and filed its cross bill in 1874, and Mason Young *et al.*, who filed their original bill in 1875, in which the South and North Alabama Railroad Company is made a defendant. The complainants, respectively, in each of the original bills, and the complainant in the cross bill, assert liens upon the same property, (the railroad, &c., of the Montgomery and Eufaula Railroad Company,) and seek a sale of that property for the satisfaction of the liens so asserted. Since June, 1876, all of said suits were in the same court, the Circuit Court of the United States for the Middle District of Alabama.

Under an agreement of the solicitors of the respective parties, made and entered into in open court, the question was submitted to that court to decide whether, upon the pleadings, proofs, and admissions of the solicitors of the parties, the mortgage lien asserted by the South and North Alabama Railroad Company was, and continued to be, permanent and superior to the liens asserted by the other respective parties. The court decided that question in the affirmative, and delivered its opinion and decree accordingly in December, 1876.

At the subsequent May term, 1877, the Court, in accordance with said opinion and decree, rendered its further decree that the property be sold, and that the proceeds of sale be applied, first to the satisfaction of the costs and receiver's certificates, and next to the satisfaction of the mortgage of the South and North Alabama Railroad Company, &c., &c. From this decree an appeal, operating as a *supersedeas*, was allowed and taken by said Young *et al.*, July 2, 1876, and is now pending in the Supreme Court.

On July 3, 1877, the Circuit Court, at the instance, and on the submission of said Young *et al.*, but against the will and objection of the South and North Alabama Railroad Company, rendered a decree that the property be sold on the second Monday in November, 1876, and, virtually, that the proceeds of sale be applied to said Young *et al.*, and in such manner (according to our opinion) as not only to give priority to the claims of Young *et al.*, but to prevent the claim asserted by the South and North Alabama Railroad Company from participation in any part of the proceeds of sale. This decree contains some words which we construe and understand to allow this South and North Alabama Railroad Company, after the property has been sold and the proceeds applied to other parties, to get what it can by protracted litigation with the purchaser or other persons or parties.

It is from this decree of July 3, 1877, that the South and North Alabama Railroad Company promptly and properly applied to the Court for an appeal and the allowance thereof, and also for *supersedeas*. The Court denied its right to appeal, or to supersede, as shown in the transcript on file.

This decree of July 3, 1877, is certainly a final decree, from which a party has the right to appeal. (Stovall *vs.* Banks, 10 Wallace, 583; Railroad Company *vs.* Bradleys, 7 Wallace, 575; and other cases cited in Phillips' Practice, revised edition, 76-81.)

An appeal from final decree is matter of right, "and if prayed, must be allowed," even where there is no expectation of reversal, and where, therefore, this court might justly reprove counsel for praying it. (The Douro, 3 Wallace, 564; United States *vs.* Adams, 6 Wallace, 101; *Ex parte* Jordan, 4 Otto, 248.)

Without the allowance of an appeal this court cannot acquire appellate jurisdiction. This court will not exercise such jurisdiction, will not go into the merits or determine whether the final decree is erroneous or not until the appeal is allowed. (Pierce *vs.* Cox, 9 Wallace, 787; Barrell *vs.* Transportation Company, 3 Wallace, 424.)

Mandamus is the proper remedy, where an appeal from a final decree is improperly denied. (United States *vs.* Gomez, 3 Wallace, 752; *Ex parte* Jordan, 4 Otto, 248.)

When, as here, the Judge waives any formal notice, and agrees that the transcript shows all the cause he wishes to show, and waives any further notice, this court may proceed at once to hear and determine whether the *mandamus* ought or ought not to be awarded. (Life and Fire Company *vs.* Adams, 9 Peters, 571.)

We insist that upon the authorities above cited and the principles above stated, the *mandamus* should be awarded, and that it is not requisite that we should now show that the final decree, from which the appeal was prayed, ought to be reversed. But if we are mistaken in this, we think it not difficult to show that said decree ought to be reversed. Without stating all the grounds for its reversal, we think the following sufficient:

1. By the appeal (with *supersedeas*) of Mason Young, et al., from the final decree for the sale of the property, and which was expressly made as a final decree in each of said causes, which was actually allowed by the Circuit Court of the United States for the Middle District of Alabama, July 2, 1877; that court lost possession of each of said causes, and each of said causes came within the control of this Court. The decree rendered after that appeal had been actually allowed as aforesaid, and was pending, for the sale of the same property, embraced by the decree appealed from, is, for that reason, void, or certainly reversible. That appeal, surely, could not do less than suspend the jurisdiction of the Circuit Court to render such a decree as that of July 3, 1877, for the sale of the same property. (Ex parte Russell, 13 Wallace, 670; 1 United States, Dig. First Series, pp. 449-452, sections 3350, 3351, *et seq.*)

2. The facts alleged in the bill filed by Strang and in the bill filed by Young *et al.* do not authorize the decree of July 3, 1877, in treating the $1,280,000 of bonds endorsed by the Governor of Alabama as liens upon the property entitled to satisfaction out of it before any provision is made for the satisfaction of the mortgage relied on by the South and North

Alabama Railroad Company, and as enforceable as such prior liens by the holders ~~of these~~ in their own names in a suit to which the State is neither plaintiff, and without even an allegation or pretense that the State has ever assigned to them its lien, (which is no more than a statute lien for its own protection.)

No mortgage was ever given to secure the payment of these endorsed bonds. The holders of these bonds claim that the endorsement gave to the State, under its statute of 1867, a lien upon the property in controversy, and that the holders of the bonds are subrogated to this lien of the State, and may enforce it in their own name, without assignment from the State and without making the State a party, and obtain satisfaction out of the property before any satisfaction is provided for the mortgages, which by legal transfers, authorized by legislative acts of the State, became the property of the South and North Alabama Railroad Company. This claim or theory of these bondholders is entirely overthrown by the opinion of the judge presiding in said Circuit Court on December 15, 1876, which is contained in the transcript, and here relied on as part of this argument.

The bill of Young *et al.*, states and shows that the endorsements were made in 1867, and "in pursuance of act of February 19, 1867." Taking this to be true, the endorsements were void *for want of* AUTHORITY in the Governor to make them. The railroad of the Montgomery and Eufaula Railroad Company was in progress and not completed in 1867, nor earlier than 1870, and therefore a lien or mortgage thereon for the $30,000 of the three-per-cent. fund (a trust fund, of which the State was the trustee, and which, by its act of February 18, 1860, it was authorized to loan for the benefit of the ultimate *cestui que* trust,) and said lien or mortgage still remains unsatisfied and unprovided for. That is the lien or mortgage here set up by the South and North Alabama Railroad Company. The existence of this lien or mortgage (either the old mortgage of 1860, or the renewal mortgage of 1866,) prevented the Governor from having *authority* under the act of February 19, 1867, to endorse the said bonds. Section 17 of that act confines the *authority* of the Governor to endorse the bonds of such companies to cases where there are "*no liens or mortgages*" on their railroad.

There never was *authority* in the Governor to endorse the bonds of the Montgomery and Eufaula Railroad Company until December 30, 1868, on which day a special act was passed conferring authority to endorse "TO THE EXTENT" authorized by the said act of February 19, 1867, notwithstanding "the mortgage made by said company to the State, under the act approved 17th February, 1866." This act of December 30, 1868, which is the first grant of *authority* to endorse the bonds of that company, contains on its face notice to the world that said mortgage for said $30,000, originally loaned in 1860, was of full force and was to continue of full force, and that the endorsements of the State were to be made and accepted with that understanding, and without prejudice to that mortgage. It is plain, from the terms ot that act, that it was not intended thereby to authorize the creation of any lien paramount or superior to said mortgage. Any other construction of that act would make the State, as the trustee of the three-per-cent. fund, guilty of a deliberate purpose to commit a breach of trust.

The endorsements made before the passage of the act of December 30, 1878, were void for *want of authority* in the Governor to make them; and being thus void, imposed no liability on the State and created no lien in favor of the State or any bondholder. Such want of *authority* cannot be supplied by any inferences or conclusions which can be legitimately drawn from the fact that the Governor did endorse the bonds. (Chambers county *vs.* Clews & Co., 21 Wallace.)

3. Upon the admissions of the solicitors and other evidence shown in the record, the decree of July 3, 1877, was not authorized, and for that reason should be reversed.

It is vain to attempt to justify the denial of the right of appeal to a corporation which was a proper, if not a necessary party to the cause or causes in which it was rendered, and which certainly yet retains interest in the causes, especially in the cross-bill cause, in the mortgage, and in the property, by clamor concerning an allegation contained *only in its answer to the bill of Young et al.*, to the effect that on or about April 29, 1876, more than a year *after* the filing of the bill of Young *et al.*, and more than two years *after* the filing of its cross bill, it transferred *the indebtedness* (not the mortgage, which was on real estate,) set forth in its cross bill to the Louisville and Nashville Railroad Company, a Kentucky corporation.

Notwithstanding that allegation, there was, *after it was made and filed*, and in December, 1876, a reference by the parties to all the causes to the Court of the question, whether the lien claimed by the South and North Alabama Railroad Company was then, upon the pleadings, proofs and admissions of the solicitors, a lien upon the railroad, &c., superior and paramount to all other liens asserted in the several causes; and, in December, 1876, the Court decided that question in the affirmative, and then declared that said claim of the South and North Alabama Railroad Company "*is* a lien" upon the railroad, &c. (See opinion and decree of December, 1876, in the transcript.

The mortgagee of real estate or his assignee, after the law day, has the legal title. In Alabama the title to real estate can pass only by writing. (McPherson *vs.* Walters, 16 Ala. R., 714.) Graham v Newman 21 Ala 497

The assignment of a mortgage of real estate after the law day must be by writing; otherwise it cannot extinguish all right and all interest in the mortgagee, or in one who holds under him by proper assignments. Where the indebtedness only is transferred, and not the mortgage, and the legal title to the mortgaged real estate is thus left in him, he is a necessary party to a foreclosure suit; and such transfer of the indebtedness only, if made *after his suit for foreclosure* had been commenced and was duly pending, cannot of itself defeat his suit, especially when, as here, it nowhere appears in the pleadings in that suit, but appears only in his answer in a separate suit, commenced in another court, long after the commencement of his foreclosure suit, by persons seeking to enforce a lien on the same real estate who were not parties to his foreclosure suit. (Partridge *vs.* Partridge, 38 Penn. State R., 78; Adams *vs.* Parker, 12 Gray, 53; Warden *vs.* Adams, 15 Mass. R., 233; Smith vs. Kelley, 27 Me., 237; Lyford *vs.* Ross, 33 Me., 197; Crinion *vs.* Nelson, 7 Mo., 466.)

The said allegation of the transfer of the indebtedness, not pretended to have been accompanied or followed by any *written* or other assignment of the mortgage, under the state of things shown to exist in these causes, cannot affect the right of any of the parties to take and prosecute an appeal from a final decree made in any or all these causes. The rule is that "the purchaser of a chose in action must always abide by the case of a person from whom he buys." (Thomas on Mortgages, 104; Davies *vs.* Austin, 1 Ves. 247.) Story Eq Pl 156 351

The said allegation cannot hurt the corporation making it, as it was made, on appeal—certainly not on application for *mandamus* to compel allowance of an appeal properly applied for and refused.

SAMUEL F. RICE.
THOMAS G. JONES,
Counsel for Petitioner.

Supreme Court of the United States.

MASON YOUNG, et al.
vs.
SOUTH & NORTH ALABAMA R. R. CO.

Brief of D. S. TROY and H. A. HERBERT,

In response to application of the South and North Alabama Railroad Company for mandamus.

October 16, 1877.

R. O. Polkinhorn, pr.

Supreme Court of the United States.

MASON YOUNG, et al.
vs.
SOUTH & NORTH ALABAMA R. R. CO.

Brief of D. S. TROY and H. A. HERBERT,

In response to application of the South and North Alabama Railroad Company for mandamus.

The facts of this case are as follows: The Montgomery & Eufaula Railroad Company, a corporation created under the laws of Alabama prior to 1860, borrowed from the State of Alabama, in 1860, $30,000, being a part of what is known in that State as the "Three per cent fund." This loan was for five years, and secured by mortgage of the property and franchises of that company; and in 1865 the loan was renewed for another period of five years, and was secured by a mortgage of the property and franchises of the Montgomery & Eufaula Railroad Company, made to the State, or to the Governor for the State, to secure its payment. After this mortgage had been made, statutes were passed in Alabama by which the State undertook to guaranty the first mortgage bonds of a certain class of railroads in that State to the amount of $16,000 per mile; and in December, 1868, a special act was passed, declaring that the Montgomery & Eufaula Railroad Company was entitled to the endorsement of its bonds at this rate, notwithstanding the subsisting first mortgage in favor of the State for $30,000.

The statutes which authorized the endorsement of bonds, declared that the bonds so endorsed should constitute a first lien and mortgage on the entire property and franchises of the company obtaining the endorsement, without any deed from the company.

The Montgomery & Eufaula Railroad Company thereupon issued its bonds, purporting on their face to be first mortgage bonds, to the amount of $1,280,000, which were endorsed by the State and negotiated, but no deed of trust was made to secure them.

The M. & E. R. R. Co. issued in 1870 $500,000 of what are called second mortgage bonds, and secured them by a deed of trust, of all its property, &c., to Thomas Pullam and William Fowler, in which it is declared that this series of bonds, amounting to $500,000, is second only to the first mortgage endorsed bonds, amounting to $1,280,000. Of this $500,000 of second mortgage bonds, $300,000 were issued to the State of Alabama in exchange for $300,000 of State bonds, under a special act of the Legislature authorizing it, and the remaining $200,000 were negotiated.

In 1872 the M. & E. R. R. Co. made default in the payment of interest on said second mortgage bonds, and Samuel A. Strang, a citizen of New York, claiming to be a holder of some of these second mortgage bonds, filed a bill in equity in the United States District Court for the Middle District of Alabama, then exercising Circuit Court powers, against the M. & E. R. R. Co., Pullam, and Fowler as trustees, and certain judgment creditors, praying a foreclosure of the second mortgage and the appointment of a Receiver, and on the filing of this bill in May, 1872, A. J. Lane was appointed Receiver by said District Court, and has ever since held the property and operated the road as Receiver. An interlocutory decree was made enjoining all creditors from proceeding to enforce their claims except in that suit, and requiring them to file their claims before a master, who was directed to take proof and report on the validity and priority of all claims. Under this decree the second mortgage bonds, $200,000, and unsecured claims, amounting to about $300,000, were proved before the master and allowed by him, but he did not undertake to settle the priorities of any of the parties.

An instalment of interest on the $1,280,000 first mortgage bonds became due on 1st September, 1872, and under an order of the Court, Lane, as Receiver, borrowed money to pay this interest and issued for the money so borrowed Receiver's certificates; a part of these certificates, amounting with interest to about $50,000, are still outstanding and unpaid.

The cause having been transferred, by act of Congress, to the Circuit Court of the United States for the Southern District of Alabama, the South & North Alabama Railroad Company applied to the Court by petition to be admitted as a party defendant, with leave to file an answer and a cross-bill. This leave was granted, and thereupon the S. & N. Ala. R. R. Co. filed an answer to Strang's original bill, and also a cross-bill against Strang, the M. & E. R. R. Co., Pullam and Fowler as trustees, and the judgment creditors, claiming to be the owner of the mortgage given by the M. & E. R. R. Co. to the State to secure the loan of the $30,000 of the "three per cent. fund," and claiming to be the beneficiary of that fund, and as such entitled to a lien, under said mortgage prior to the lien of all others, on the property, &c., of the M. & E. R. R. Co., and praying for a foreclosure and sale for payment thereof.

Subsequently, Achille Nicholas and Nicholas Lespennasse, claiming to be holders of first mortgage bonds, endorsed by the State of Alabama, intervened by petition, and were made parties to the suit, and while this suit was still pending in the Circuit Court for the Southern District of Alabama at Mobile, Mason Young and others, claiming also to be holders of first mortgage bonds to a large amount, obtained leave of the Court to sue the Receiver, and thereupon filed an original bill in Equity in the Circuit Court of the United States for the Middle District of Alabama against the M. & E. R. R. Co., Pullam and Fowler, as trustees, A. J. Lane, as Receiver and as an individual creditor, and the S. & N. Alabama R. R. Co., claiming the right on behalf of themselves and all other holders of first mortgage bonds, to be subrogated to the statutory lien of the State, and that this lien was prior to the lien of the "three per cent. fund" mortgage for $30,000 held by the S. & N. Ala. R. R. Co.

The S. & N. Alabama R. R. Co. answered this bill denying the priority of the lien of the first mortgage bonds over the lien of the "three per cent. fund" mortgage, and setting up other defences; but the answer avers that the S. & N. Alabama R. R. Co. had transferred the "three per cent. fund" mortgage to the Louisville & Nashville Railroad Company.

The averment of this transfer of the "three per cent. fund" mortgage to the Louisville & Nashville R. R. Co. by the South & North Alabama Railroad Company, is found in the answer of the latter to the bill of Mason Young and others, on page 613 of the manuscript record, as follows:

"Defendant states that it was and has been rightfully a creditor of said M. & E. R. R. Co., for the sum hereinafter set forth, until about the 29th April, 1876, and that the said indebtedness and all right, title and interest of defendant thereto, was transferred by defendant to the Louisville & Nashville Railroad Company, a foreign corporation chartered by the State of Kentucky, and whose principal office and place of business, is the City of Louisville, State of Kentucky, for a valuable consideration, on or about April 29th, 1876."

Then follows a description of the "three per cent. fund" mortgage, which was the only claim ever held by the S. & N. Ala. R. R. Co. against the M. & E. R. R. Co.

By a subsequent act of Congress the Strang suit, which was still pending in the Circuit Court for the Southern District, was transferred to the Circuit Court for the Middle District, and of course brought with it the cross bill of the S. & N. Ala. R. R. Co., so that both of the original bills and also the cross bill, were all pending in the same Court.

All these causes were jointly submitted at the Spring Term, 1876, of said Circuit Court, by consent. for a decision on the sole question, as to whether the lien or claim of the S. & N. Alabama R. R. Co. under the three per cent. fund mortgage was prior or subsequent to the lien of the first mortgage bonds. At the Fall Term, a decision of this question was made by the Court, Judge BRUCE delivering an elaborate opinion, and a decree was thereupon entered, which, so far as it affects the question here presented, is as follows:

"IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

SAMUEL A. STRANG *et al.*
vs.
THE MONTGOMERY & EUFAULA R. R. CO. *et al.* } *In Equity* No. 2.

(Original and Cross Bill.)

MASON YOUNG, *et al.*
vs.
THE MONTGOMERY & EUFAULA R. R. CO. *et al.* } No. 10.

Each of the above mentioned causes was duly submitted at the last term of this court under and upon the consent and agreement in open court of the respective solicitors of the several parties, that each of said causes should be thus submitted for decision and decree at that term or any future term, upon the question whether under the pleadings, proofs and admissions of the respective solicitors of the parties the mortgage claim and lien of the South & North Alabama Railroad Company asserted and disclosed in the answer and cross bill of that company in the first above mentioned cause, as well as in the answer of that company, in the second above mentioned cause, was and still continues to be paramount and superior to the respective claims and liens asserted and disclosed in the pleadings of the several other parties to said respective causes."

The court then proceeds to decide the question thus submitted in favor of the South & North Alabama Railroad Company, and declares its lien to be paramount to all others; fixes the amount, including interest, at $61,212, and declares it to be entitled to priority of payment of that sum out of the proceeds of the property. No other question is decided and no order of sale is made, and the decree concludes: "this entire decree shall be and shall operate as the decree of this court in each of the above mentioned causes. All further orders are reserved.

John Bruce, *Judge.*"

December 22, 1876.
Manuscript record, pp. 824–826.

Both causes were again submitted at the Spring Term of the Court, and a decree was rendered on 6th of June directing a sale of the railroad and property of the Montgomery & Eufaula R. R. Co., and that from the proceeds of the sale should be first paid the costs, receiver's certificates and solicitor's fees, (the amount of each to be ascertained by a reference ordered in the decree); next the amount of the mortgage debt of the South & North Ala. R. R. Co., as ascertained by the decree of the preceding term, with interest thereon; and providing that the residue of the purchase money might be paid "in first-mortgage bonds, endorsed by the State of Alabama and mentioned in the pleadings in these causes."

But there is nothing said in the decree about establishing or foreclosing the first mortgage or the second mortgage, or of their respective priorities as between each other or as against the judgment creditors; and the decree is entirely silent as to how the first-mortgage bonds shall participate in the proceeds of the sale, if the residue should be insufficient to pay them in full; and also as to what should be done with the surplus if more than sufficient to pay the first-mortgage bonds in full.

Manuscript record, pp. 836 to 841.

Before the Court adjourned the complainants in the bill of Mason Young and others, and Achille Nicolas and Nicholas Lespanasse, intervening creditors in the Strang suit, presented a petition for an appeal and supersedeas of this decree, which was allowed, and on their entering into bond, which was approved in open court, the decree was superseded on July 2, 1877.

Manuscript record, pp. 843–846.

On the 3d of July, 1877, both causes were "again submitted by consent of the parties to each of said causes who have appeared by counsel, whose interests are adverse to the claim and mortgage of the South & North Alabama Railroad Company, namely, Samuel A. Strang, complainant, and the Montgomery & Eufaula Railroad Company, defendant, and Achille Nicolas and

Nicholas Lespanasse intervening creditors in the cause first above mentioned; and Mason, Young and others, complainants, and the Montgomery & Eufaula Railroad Company, A. J. Lane, Receiver, and A. J. Lane, individually, defendants in the cause last above mentioned, for a decree settling the equities of said several parties as between each other, and for a sale of the railroad franchises and property of the Montgomery & Eufaula Railroad Company, subject to the lien and claim of the said South & North Alabama Railroad Company, to the end that this litigation, except in so far as it concerns the said South & North Alabama Railroad Company, may be terminated; and it appearing to the Court that the parties to this submission are entitled to a decree as to their several equities as between each other, said submission of said several causes, by the consent and for the purposes above stated, is allowed."

The Court then proceeds to settle the equities and priorities of the several parties to the submission as between each other, establishes and forecloses both the first and second mortgages and directs a sale of all the railroad property and franchises of the Montgomery & Eufaula Railroad Company, "subject, however, to the claim of the South & North Alabama Railroad Company, as hereinafter stated." The decree directs that from the proceeds of the sale shall be paid the costs and expenses thereof, and all costs of both suits then unpaid, the receiver's certificates and solicitor's fees, and that the residue of proceeds shall be distributed *pro rata* amongst the holders of first mortgage bonds; and if there should be a residue, after paying them in full, it is to be brought into Court to abide such order as the Court may make concerning the same.

It further directs that on the purchaser's complying with the terms of sale, a conveyance, first submitted to and approved by the court, shall be made to him, which conveyance "shall vest in such purchaser all the title, both at law and in equity, of all the parties aforesaid in and to all the property, rights, and franchises thereby conveyed, subject only to the lien or claim thereon of the South & North Alabama R. R. Co., as the same may be finally adjudicated and determined, and all the rights and equities of the said South & North Alabama R. R. Co. in and to the said property, rights, and franchises so sold, shall be and remain the same in all respects as if this decree had not been rendered, the said South & North Ala. R R. Co. not being a party to this submission, and, in the opinion of the court, as matter of law, not a party to this decree, although appearing and claiming to be a party thereto, and the right as a party to object thereto.

July 3, 1877. W. B. Woods, *Judge.*"
Manuscript Record, pp. 854–860.

It will be seen from the foregoing statement of facts that the case, in short, is an insolvent railroad company which executed or created three mortgages; one known as the "three per cent. fund" mortgage, made in 1860, to the State of Alabama, to secure the loan of $30,000; another known as the first or statutory mortgage, made in 1868, to secure the State of Alabama as endorser of bonds to the amount of $1,280,000; and the third known as the second mortgage, made in 1870, to Fowler and Pullam, as trustees, to secure bonds of the company to the amount of $500,000.

The litigation was commenced in May, 1872, by the bill of Samuel A. Strang, on behalf of himself and all other holders of bonds secured by the second mortgage. This bill recognizes the priority of first or statutory mortgage of $1,280,000, but makes no mention of the "three per cent. fund" mortgage. Upon this bill, however, a decree was rendered requiring all creditors of the insolvent corporation to propound their claims in that suit.

The South & North Alabama R. R. Co. intervened by petition, and was made a party defendant, and thereupon filed a cross bill, alleging its ownership of the "three per cent. fund" mortgage by transfer from the State of Alabama, and also as beneficiary of the alleged trust upon which the State held the "three per cent. fund," and claiming priority of lien over all other creditors of the insolvent corporation, and a foreclosure and sale.

Achille Nicolas and Nicholas Lespenasse also intervened by petition, as holders of some of the first or statutory mortgage bonds, and claimed a priority of lien over the South & North Ala. R. R. Co. and all others.

Subsequently, Mason Young and others, holders of a large number of the first or statutory mortgage bonds, filed an original bill on behalf of themselves and all other holders of such bonds to foreclose that mortgage; and in its answer to this bill the South & North Ala. R. R. Co. averred *that it had transferred the "three per cent. fund" mortgage to the Louisville & Nashville R. R. Co.;* but no further notice of this transfer is taken in the proceedings.

The Court treated the original bill of Strang to foreclose the second mortgage; the cross-bill of the South & North Ala. R. R. Co. to foreclose the "three per cent. fund" mortgage, and the original bill of Mason Young & others to foreclose the first or statutory mortgage as constituting one suit.

Several matters of controversy existed in the cause, considered as a whole, one of which was as to the priority of lien between the South & North Ala. R. R. Co. under the "three per cent. fund" mortgage, and the lien of holders of the first or statutary mortgage bonds.

This question, by consent, was submitted separately and a decree was rendered in favor of the South & North Ala. R. R. Co. directing a sale of the property, franchises, &c., of the insolvent corporation for the payment of the claim of the South & North Ala. R. R. Co., but without settling any other equities in the case. From this decree the holders of the first or statutary mortgage bonds appealed, and on giving bond obtained a supersedeas.

The "three per cent. fund" mortgage, (including interest up to December 22, 1876, when the decree fixing the sum due was rendered,) amounts to $61.212. The railroad of the insolvent corporation is 80 miles long, and with equipments, franchises, &c., is worth at least one million dollars. All other persons and parties interested in this property adjusted all matters of difference as to their rights in regard to it, and selected a board of trustees with Mr. Jeremiah Milbank, of New York, as chairman, with full power to liquidate the insolvent corporation and organize a new corporation to operate the railroad. To this end the causes as to all parties except the South & North Ala. R. R. Co. were again submitted, by the consent of the parties to the submission, and a decree was rendered upon this submission, expressly reserving all the rights of the South & North Ala. R. R. Co. in all respects as if the decree had not been rendered. It is this decree that the South & North Ala. R. R. Co. wishes to appeal from and supersede. The Circuit Court denied the appeal on the ground that the South & North Ala. R. R. Co. was not a party to the decree, and this application is for *mandamus* to compel the circuit judge to grant the appeal.

I.

By section 692, of Revised Statutes, it is provided, in general terms "that an appeal shall be allowed to the Supreme Court from all final decrees of any Circuit Court. &c.;" and by section 1012, appeals are subject to the same rules, regulations and restrictions as are or may be prescribed by law in cases of writs of error. But there is no statute, in reference to appeals or writs of error, which expressly provides what person or party is entitled to an appeal or writ of error.

It is well settled, that any party to a suit who is aggrieved by the decree rendered, has the right to appeal under the statute; but we have found no well considered case in which it was held that a person who, although a party, is not aggrieved by the decree, and whose substantial rights are not affected by it, and would not be affected by its reversal or modification, has the right to appeal therefrom. This is the case under consideration.

What, then, is the proper construction of section 692 in reference to the *person* who is entitled to appeal?

Under this statute it has been held, that in cases where only one of several defendants is affected by the judgment or decree, the party, whose interest only is affected by the alleged error, may carry up the case without joining the others in the appeal or writ of error: whilst the rule is universal, that where the interest is joint, and the interest of all is affected by the judgment, all must join in the writ of error.

Simpson vs. *Gudy*, 20 Wall., 152.

The reason of the exception is, that no party has any right to complain of any alleged error which does not affect his interest, and hence it is not necessary that he should join in the writ of error. Upon the same principle appellate courts constantly refuse to reverse a decree or judgment, if the error is without injury to the party appealing.

In a salvage case, each several claimant has a distinct interest and a several right of appeal. The matter in controversy between him and the libellants is not the whole salvage compensation, but so much of it as is chargeable on his property. Hence, a several claimant cannot appeal unless the amount in controversy between *him* and the libellants is sufficient to give the Supreme Court jurisdiction. STORY, J., says, "when separate claims are interposed, although the libel is joint against the whole property, each claim is treated as a distinct and independent proceeding in the nature of a several suit, upon which there may be a several independent hearing, decree and appeal. This is very familiar in practice in prize causes and seizures *in rem* for forfeitures; and is equally applicable to all other proceedings *in rem*, whenever there are distinct and independent claimants."

Stratton vs. *Jarvis & Brown*, 8 Pet., 4.

It follows from the principles thus settled that an appeal is a new and initial proceeding; and the question who are proper and necessary parties must be determined by analagous principles in other judicial proceedings. Thus, where the interest is joint in several persons, all must join in the suit, and, where the interest of each is separate and distinct, each must sue separately.

It is true that the object of an appeal is to correct the errors of an inferior tribunal; but not all errors—only such errors as affect the rights of the party appealing.

Whilst then, to give the right of appeal, it is necessary that the person desiring to appeal should be a party, or at least a *quasi* party, who has submitted himself to the jurisdiction of the court, yet the mere fact that he is a party is not itself sufficient. He must also have some right, which is injuriously affected by the decree.

Accordingly it was said in the case of *Neal* vs. *Singleton*, 26 Ark., 491, 493: "We are of opinion, that the right to relief by appeal from a final judgment exists only in favor of the parties, whose substantial rights have been prejudiced by the judgment appealed from." Also *Combs* vs. *Jefferson Pond Draining Co.*, 3 Met., (Ky.) 72.

In Wisconsin, the language of the statute formerly was, "when any person shall be desirous of appealing from any order or decree," &c. With this statute in force, the Supreme Court, in the case of *Strong* vs. *Winslow*, 3 Chand., 21, said: "The principle of law is too well settled to require a reference to authority on the subject, that in order to be heard the party seeking the hearing must show, or at least offer to show, that he has sustained an injury, or that he has a right that ought to be enforced in a judicial tribunal. * * * * * * *

The appellant contends that the words of the statute are so broad that a person need not show any interest in the subject matter of the estate to entitle him to an appeal. This proposition is somewhat startling; such a construction would make the legislature appear ridiculous in the extreme. Courts of justice never open the door to individuals and permit litigation for no other reason than that some one wishes to know what he can do with others engaged in business which in no wise concerns him or affects his rights. The ministers of justice ought never to consume time for the mere purpose of satisfying the morbid appetite of idle curiosity. It cannot be construed, with any degree of plausibility, that the language, 'where any person shall be desirous of appealing from any order or decree,' &c., should be construed to mean that persons not aggrieved, or in any way affected in their persons or their rights, should be entitled to invoke the aid of an appellate court for the purpose of reviewing the proceedings of a subordinate tribunal. Yet this is the only thing relied on by the plaintiff to sustain his case. Courts will, if possible, construe statutes so as to give the effect, evidently intended by the Legislature, without doing violence to the language used in the act; and statutes in *pari materia* are all to be construed. We are clearly of the opinion that a person having no interest, nor in any way affected by the adjudication of a Probate Court, is not entitled to an appeal within the statute."

We have made this long extract because it states the matter more clearly and strongly than we are capable of doing. See, also, *Amery* vs. *Amery*, 26 Wis., 152, which was a decision to the same effect, after a change in the phraseology of the statute.

The principles of these decisions accord with sound reasoning and a correct administration of justice, and maintain the proposition that no person, whether a party or not, is entitled to an appeal from any judgment or decree which does not affect his rights, or does not aggrieve him. Such is evidently the construction of section 692 of Revised Statutes.

An examination of the record will show that the rights and equities of the South & North Alabama Railroad Company are not only not injuriously affected, but all of them amply protected by the decree from which an appeal was desired.

By the two decrees of December 22, 1876, and June 6, 1877, the validity and priority of its mortgage lien was determined in its favor, and on the latter decree a sale was ordered for its payment, on its application therefor. All the relief to which it was entitled had been granted. From this decree an appeal had been taken by the complainants, and the decree was superceded.

It was a final decree, so far as concerned the claim of the South & North Alabama Railroad Company, which was a separate, distinct and independent claim from those of all the parties. Nothing remained to be done in respect to it. But it did not settle and determine the rights of the other claimants as between themselves. To accomplish this by consent and agreement of all the other parties, the South & North Alabama Railroad Company *not* being a party thereto, the case was submitted, and the decree of July 3, 1877, was rendered. This decree does not in any wise interfere with the two previous decrees. The rights of the South and North Alabama Railroad Company are protected by a supersedeas bond, which was deemed by the Court ample and sufficient for that purpose. The property is local and permanent, as to the greater portion of it; if it is sold under the decree of July 3, 1877, it will be relieved of all the costs and expenses of the suit and the receiver's certificates, a real benefit thereby accruing to the South & North Alabama Railroad Company; and by the terms of the decree "all the rights and equities of the said South & North Alabama Railroad Company in and to the said property, rights and franchises so sold shall be and remain the same in all respects as if this decree had not been rendered."

Further argument is unnecessary to show, first, that the South & North Alabama Railroad Company is not, in fact or law, a party to this decree; and, second, if technically a party, then it is not, in any way, aggrieved by the decree, nor are any of its rights affected thereby. In either event, it was not entitled to the appeal prayed for.

II.

But if technically a party and technically entitled to appeal, the Court will not grant a mandamus to compel its allowance and permit its supersedeas where no benefit can result to the appellant by its revisal or modification, and great injury may result to the other parties by the delay.

It does not follow that this court will grant a mandamus because it would have allowed the appeal. The rule in considering petitions for appeal, is to give to the petitioner the benefit of any doubt as to his right to appeal; but the rule is precisely the reverse in reference to applications for mandamus. "The writ of mandamus being justly regarded as one of the highest writs known to our system of jurisprudence, it only issues when there is a clear and specific legal right to be enforced, or a duty which ought to be and can be performed, and where there is no other specific and adequate legal remedy. The right which it is sought to protect must therefore be clearly established, and the writ is never granted in doubtful cases."

High on Extraordinary Legal Remedies, p. 11, § 9, citing numerous authorities;
See also § 10 and cases cited.

The proceeding for mandamus has "all the qualities and attributes of a civil action." "It is regarded as an original proceeding or suit." High, § 8, p. 10. The relator must show that he is entitled to maintain the action. "And since the writ is founded on a suggestion of the relator's own right, it is not sufficient to show merely an absence or want of right on the part of respondents." High, § 10, p. 13.

Hence, it is immaterial in this proceeding whether or not there was error in the decree from which the relator desires to appeal; if the decree was plainly erroneous, that would not assist in establishing the right of the relator to a mandamus to compel the allowance of an appeal from it, unless the error affected injuriously the rights of the relator.

But the Court must look at the whole record to determine whether the relator is entitled to an appeal, because it is obvious that the Court will not render a judgment awarding a writ of mandamus to compel the allowance of an appeal, and then dismiss the appeal when allowed.

The position which the South & North Alabama Railroad Company occupied in the litigation in the Circuit Court was, that of sole plaintiff in a cross bill, seeking a foreclosure of the "three per cent. fund" mortgage, and it obtained a decree in its favor as such sole plaintiff for such foreclosure and a sale of the mortgage premises. But before that decree was rendered, it had assigned and transferred this mortgage and all its "right, title, and interest thereto," to the Louisville & Nashville Railroad Company, a foreign corporation located in Kentucky, and the fact of this transfer of the "three per cent. fund" mortgage to the Louisville & Nashville Railroad Company is distinctly averred in the answer to the South & North Alabama Railroad Company to the bill of Mason Young and others.

There is no principal of equity jurisprudence and practice, better settled than that a sole plaintiff cannot proceed in the cause after assigning the cause of action pending the suit. There is some conflict in the authorities, as to whether the assignee, pending the suit of a sole plaintiff, must proceed by original bill, or by an original bill in the nature of a supplemental bill; but they are uniform in holding that the assignor, the original plaintiff, cannot proceed in the cause, and is not entitled to a decree. See—

Story's Eq. pleading, §§. 156, 349, 351, 352,
Mitford & Tylers, Eq. Pl., p. 164.
Mills vs. *Hoag*, 7 Paige, 18.
Card vs. *Bird*, 10 Paige, 427.
People vs. *Wilson*, 26 Cal. 127.
Griggs vs. *Detroit*, 10 Mich. 117.
Solomon vs. *Solomon*, 13 Simons, 516.
Johnson vs. *Thomas*, 11 Beavan, 502.

The Louisville & Nashville Railroad Company did not apply to be made a party to the proceedings in any way. The plaintiff in the original bills to foreclose the first or statutory mortgage, and to foreclose the second mortgage, could not bring in this Kentucky corporation, because it was not within the jurisdiction of the court. It could have intervened by petition, if it had been willing to submit to the jurisdiction of the court, and to be bound by the decree. But it preferred to remain out, and leave the South & North Alabama Railroad Company, having no interest whatever in the litigation to carry on the suit to foreclose the "three per cent. fund" mortgage. It is this same litigant without any interest that has instituted and is prosecuting this new suit here for a writ of mandamus. A party who has assigned all his interest in the litigation, cannot appeal, for the obvious reason that it is impossible for error to be injurious to the interests of one who has no interest. *See authorities supra, particulaly* 7 Paige 18 *and* 10, Paige 427.

III.

We have not seen the petition nor the brief of the opposing counsel; but we do not deem it necessary or proper to discuss several interesting questions presented by the merits of the case and by the mode of proceeding in the Court below. They are not involved in this proceeding. One of these questions is as to the power of the Circuit Court, sitting in equity, to receive the submission of the cause and render a decree after an appeal. Without discussing it, we refer to the decisions of *Chancellor Kent* in *Messonier* vs. *Kauman*, 3 *Johns. Chy. Rep.*, 66. *Barrow* vs. *Rhinelander*, *Ib.* 120. *Riggs* vs. *Murray*, *Ib.* 160, and *Green* vs. *Winter*, 1 *Johns. Chy. Rep.*, 77. Also, *see Story* vs. *Duffy*, 8 *Howard*, (N. Y.) 488. These cases show the jurisdiction of a court of equity after an appeal, and fully sustain the action of the Circuit Court in receiving the submission by consent and in rendering its decree pursuant thereto. It is a wholesome jurisdiction, indispensable to the administration of justice in courts of equity. But it is sufficient to say that all persons whose interests were affected by the decree are satisfied with it, and are willing to rest on the jurisdiction of the court which rendered it.

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